(1)

Supreme Court, U.S.
FILED

96 522 JUL 29 1996

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

PERCY HARRIS, JR.,

Petitioner,

-vs-

CITY OF HAMTRAMCK; HAMTRAMCK CITY COUNCIL; MICHAEL ZEBROWSKI, CONTROLLER; JOSEPH J. GRECKI

Respondents

Petition For Writ of Certiorari
To The Supreme Court
Of The State of Michigan

PETITIONER FOR WRIT OF CERTIORARI

Percy Harris, Jr., In Pro Se
P.O. Box No. 14231
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129pp

QUESTIONS PRESENTED

1. Does the Petitioner have a clear legal right to reinstatement and back pay under state statute, **MCL 38.514,** because the charges for which he was dismissed from employment were **not** filed within the ninety (90) days of the day of the event?

The Michigan Supreme Court has said . . . .No
The Petitioner says . . . . . .Yes
The Respondents say . . . . . No

2. Did the state's highest appellate court **Michigan Supreme Court** have a clear legal duty to order the issuance of Petitioner's **Writ For Mandamus** under the state statutes, **MCL 752.11** and **MCLA 600.4401 (3)** the statutory mandate **MCL 38.514?**

The Michigan Supreme Court says . . . . . No
The Petitioner says . . . . . Yes
Respondents say . . . . . No

3. Did the Petitioner have a clear legal right to a full, undiminished one (1/2) half pay pension benefit payable the month following the date that he would have first become eligible to retire, had he remained in employment under **MCL 38.556 (D) Section No. 6, Subparagraph No. 2(May 14, 1976 Amendment); Article No. XIII, Section No. 4,** of the **Hamtramck City Charter;** and **Article No. 9, Section No. 24, of the Michigan Constitution of 1963?**

The Michigan Supreme Court says . . . . . No
The Petitioner says . . . . . Yes
The Respondents say . . . . . No

4. Did the state's highest appellate court, the **Michigan Supreme Court** have a clear legal duty to order the issuance of Petitioner's request for **Writ of Mandamus** under the requirements of **MCL 752.11; MCL 600.4401 (3)**, based upon egregious violations of **MCL 38.514; MCL 38.556 (d) Section No. 6, Subparagraph No. 2 (the May 14, 1976, Amendment); Article No. XIII, Section No. 4** of the **Hamtramck City Charter; Article No. 6, Section No. 28** and **Article No. 9, Section No. 24,** of the **Michigan Constitution of 1963;** and the **5th and 14th Amendments of the United States Constitution;** notwithstanding the fraudulent February 4, 1985 Federal Court Consent Judgment **(MCLA 600.5855)** which sought to conceal Petitioner's statutory rights under said statutes?

The Michigan Supreme Court has said . . . . . No
The Petitioner says . . . . . Yes
Respondents say . . . . . No

5. Is state law and state constitutional mandate as interpreted by either the state intermediate **(Michigan Court of Appeals)** and/or its highest appellate court **(Michigan supreme Court)** binding in **civil cases,** in the federal courts under **Section No. 34,** of the **Federal Judiciary Act of 1789, *Erie R. Co. v Tompkins* 304 US 64, 58, 78; 58 S Ct. 817, 823 (1938)** and **28 U.S.C. 1652?**

The Michigan Supreme Court says . . . . . No
The Petitioner says . . . . . Yes
The Respondents say . . . . . No

6. Did the state's highest appellate court, the **Michigan Supreme Court** violate the state statute **MCL 752.11** and **MCLA 750.478** and denying Petitioner due process and equal protectionof the law, by refusing to enforce his right of contract **(Collective Bargaining Agreement, July 1, 1977 - June 30, 1979 Article Nos. XI and XIII),** constitutionally protected under **Article No. 1, Section, of the Michigan Constitution of 1963;** and **Article No. 1, Section No. 10** and **Article No. 4, Section No. 1 of the United States Constitution of the United States?**

The Michigan Supreme Court has said . . . . . .No
The Petitioner says . . . . . Yes
The Respondents say . . . . . No

7. Did the state's highest appellate court the **Michigan Supreme Court**, violate the state statutes, **MCL 752.11** and **MCLA 750.478** by failing and refusing to enforce its own rule of law ***(Justewicz v Hamtramck CSC,* 65 Mich App 555, 560-561 (1975),** in that it refused to order the respondents to certify to the court Petitioner's **complete National Security Agency (NSA) - Minaret . . . FBI Cointelpro Subversive File No. 691767-H--(69)(1)(7) 67-H - - - Michigan Attorney General - Michigan State Police "Red Squad" File No. 9732604, "fabricated"** by that agency in an attempt

to disconnect it from the FBI file, which twice directly instigated Petitioner's criminal prosecution in **43 Mich App 746 (1972)** and the subject matter of his **January 5, 7, 1979,** media interviews, that the prosecution had been a frame-up, based upon perjured testimony; and that transcripts of the **January 6, 1979** and **June 21, 1979,** before then Hamtramck Director of Public Safety, **Henry Jablynski,** which would have shown that as in the case of the **August 20, 1979,** Civil Service Commission hearing, that there was no **competent, material** and **substantial evidence** on the **whole record,** as required by **Article No.6, Section No.28,** of the **Michigan Constitution of 1963,** to insure a meaningful judicial review?

The Michigan Supreme Court has said . . . . No
The Petitioner says . . . . . Yes
The Respondents say . . . . . No

LIST OF ALL PARTIES

The following is a list of all parties to the proceeding in the Michigan Supreme Court:

1. Percy Harris, Jr., Appellant/Petitioner;
2. City of Hamtramck, Appellee/Respondent;
3. Michael Zebrowski, Appellee/Respondent;
4. Joseph J. Grzecki, Appellee/Respondent;
5. Michigan Employees Retirement System Appellee/Respondent;
6. Mr. Michael Moquin Assistant Attorney General Appellee/Respondent

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED. i

LIST OF ALL PARTIES v

TABLE OF AUTHORITIES

Cases. xiii

Constitutional Provisions and Statutes . . xv

OPINIONS BELOW. 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS 3

STATEMENT OF THE CASE 14

REASONS FOR GRANTING WRIT 25

CONCLUSION 27

APPENDIX

Michigan Court of Appeals order entered . . . **App 1** on May 30, 1995, dismissing Petitioner's Complaint For Mandamus and denying Motion For Immediate Consideration, without a written opinion.

Michigan Supreme Court order entered . . . **App 2**
on February 23, 1996, denying Petitioner's
Delayed Application for Leave to appeal, without
a written opinion.

Michigan Supreme Court order entered . . . **App 3**
on April 29, 1996, denying Petitioner's
Motion For Reconsideration, without a
written opinion.

Correspondence dated November 7, 1978 . . **App 5**
John Sitek, Chief of Police, to Percy Harris, Jr.

Correspondence dated January 12, 1979 . . . **App 7**
from John Sitek, Chief of Police to Lieutenant Percy
Harris.

Correspondence dated January 17, 1979. . . . **App 9**
from James N. Canham of Tyler and Canham, P.C.
Attorneys & Counselors at Law to William L. Cahalan,
Wayne County Prosecutor.

Correspondence dated April 26, 1979 . . . . . **App 11**
from Dominick R. Carnovale, Chief Assistant
Prosecuting Attorney to James N. Canham of Tyler
and Canham, P.C.

Collective Bargaining Agreement . . . . . **App 13**
(July 1, 1977 thru June 30, 1979) detailing Article XI,
Pensions and Retirements, Article XII, Strike
Prohibition and Article XIII, Discipline.

Correspondence dated May 21, 1979 . . . . . **App 14**
from John Sitek, Chief of Police to Lt. Percy Harris Jr., of the Hamtramck Police Department.

Correspondence dated May 23, 1979 . . . . . **App 15**
from Percy Harris, Jr. to Director of Public Safety, Mr. Henry Jablynski requesting two week adjournment in hearing scheduled for May 23, 1979.

Correspondence dated May 23, 1979 . . . . . **App 17**
from Director of Public Safety, Henry Jablynski to Mr. Percy Harris, Jr. His response to Mr. Harris' request for two week adjournment of the May 23, 1979 hearing.

Correspondence dated May 18, 1979. . . . . **App 20**
from Chief of Police, John Sitek to Mr. Percy Harris, Jr. detailing a list of violations.

Correspondence dated May 18, 1979 . . .. . . **App 22**
from Chief of Police, John Sitek to Director of Public Safety,Henry Jablynski requesting Mr. Harris' dismissal from active duty.

Correspondence dated June 22, 1979. . . . . **App 26**
from Director of Public Safety, Henry Jablynski to Mr.Percy Harris, Jr. detailing charges brought against Petitioner in connection with the media interviews broadcast over WDET-FM and Channel 50,WKBD and the subsequent hearing held on June 21, 1979 based on those charges.

Transcript Excerpt, Hamtramck Civil . . . . . **App 32**
Service Disciplinary Hearing Upon Charges brought against Petitioner on August 20, 1979.

Correspondence from S. M. Amejka, ... **App 41**
Personnel Director of the Hamtramck Civil Service Commission to Mr. Edward Wishnow, Attorney for Petitioner of Bornstein, Wishnow, Shaye & Schneiderman regarding the City of Hamtramck Civil Service Commission's adopted resolution of August 20, 1979.

Excert of Arbitrator, William J. . . . . **App 43**
McBrearty's July 11, 1980 Opinion and Award.

Red Squad Subversive File No. 9732604 . . .**App 47**
fabricated to read No. 0732604 to conceal its connection to FBI Cointelpro Subversive File No. (69)(1)(767-H). . . 691767-H---to prevent any recovery of damages under 18 USC 2520 (A)(B) and 42 USC 1985 (3), as in *Hampton v Hanrahan* 600 Fed 2d 600, 622 (1979).

FBI response dated September 9 1979, ... **App 48**
to U.S. Attorney Ralph B. Guy, Jr. concerning Petitioner's complaint dated August 30, 1979, regarding his wrongful conviction upon perjured testimony in *People v Percy Harris, Jr.* 43 Mich App 746 (1972); directly provoked by the then unknown FBI Cointelpro Subversive File No. 691767-H.

FBI correspondence dated September 9, . . . **App 49**
1971 to FBI Director containing copies of illegal, electronically intercepted telephone conversations dated July 1, 1969 and December 13, 1969 which had falsely connected Petitioner to the Chicago Black Panther Party and furnished to Ralph B. Guy; and said correspondence formed the basis of Judge
Guy's invidiously discriminatory animus shown against Petitioner in Federal Civil Action Nos. 74-71710, 77-71217 and 81-74095 as exhibited in Judge Guy's July 14, 1982 Order restricting Petitioner's right to discovery the incriminating evidence proving his bias.

Opinion dated July 14, 1982 by then . . . . . **App 51**
Federal District Judge Ralph B. Guy, Jr. restricting petitioner's right of discovery to the incriminating evidence conclusive of the judges' violation of 28 USC 455 (b)(1)(3)(e) in 81-74095.

By way of reference, a Motion had been made by Petitioner In Pro Se on the grounds set forth
above and Motion for New Trial in 74-71710 and 77-71217 case.

Michigan Supreme Court Administrative . . . . **App 61**
Order 1994-4 Resolution of Conflicts in Court of Appeals Decisions.

Michigan Court of Appeals Order dated . . . . **App 64**
June 21, 1994, Judge Michael J. Connor presiding denying Order of Contempt and Sanctions against Petitioner's dismissed former attorney Eleanor Cattron-Smith; and staying all proceedings for 28 days from the Clerk's certification of that order to permit Petitioner to obtain new counsel and/or to indicate that he will proceed In Pro Pria Persona.

By way of reference, Judge Michael Connor is the same man who had recommended a criminalwarrant against Petitioner for felonious a/w/gun in *People v Percy Harris, Jr.* 43 Mich App 746 (1972)

While a Recorder's Court Judge, Judge Connor had wilfully and deliberately allowed his name to be used upon a fabricated Affidavit submitted against Petitioner at his arbitration hearing by the accuser then Chief of Police, John Sitek. Even after the fabrication was challenged, Judge Connor later legitimized it by signing same and concealing said fact from the court and Petitioner.

Judge Connor while Assistant Wayne County Prosecutor had occupied the same position as Prosecuting Attorney as Richard Javolec in *Hampton v Hanrahan*, 600 Fed 2d, 600,602, 618 (1979).

Michigan Court of Appeals Order . . . . . **App 65**
dated August 26, 1994 denying the Motion to Disqualify Judge Connor as unnecessary. Judge Connor had automatically been recused from reconsideration of the matter before the court. Petitioner's request that all judges of the First

District of the Court of Appeals be disqualified because of the question of "taint" was denied as meritless.

Statement of Facts . . . . . **App 66**

Order dated December 8, 1982 by . . . . . **App 69**
Federal District Judge Ralph B. Guy, Jr. refusing to recuse under 28 U.S.C. 455 (b)(1)(3)(e).

Opinion dated December 8, 1982 by . . . . **App 71**
Federal District Judge Ralph B. Guy, Jr. in support of his denial of recusal.

Correspondence dated March 14, 1977. . **App 77**
from Ralph B. Guy, Jr.'s, successor, as United States Attorney for the Eastern District of Michigan confirming the existence of an FBI document (September 9, 1971) in response to Petitioner's August 30, 1971 and October 16, 1976 complaints.

Order dated May 30, 1993 by Wayne . . . **App 79**
County Circuit Court, Judge Richard Kaufman granting in part and denying in part Motion and Brief in Support of Writ of Mandamus.

TABLE OF AUTHORITIES

	Page
Cases	
AFSCME v. Center Line, 414 Mich App 642, 655 (1982)	22
Campbell v. Judge's Retirement System, 378 Mich App 169, 183 (1966)	16
Dullam v. Wilson, 53 Mich 392, 412-413 (1883)	21
Erie R. Co. v. Tompkins, 304 U.S. 64, 58, 78;58 S. Ct. 817, 823 (1938)	5, 18, 27
Gantz v. City of Detroit, 399 Mich 649, 652 (1973)	20
Goodrich v. Ypsilanti Twp. Bd., 209 Mich App 344, 351 (1995)	15, 18
Griffin v. Breckenridge, 403 U.S. 101, 91 S. Ct. 1790, 29 L. Ed. 338 (1971)	15
Hampton v. Hanrahan, 600 F2d 600, 643 (1979)	23, 24
Justewicz v. Hamtramck CSC, 65 Mich App 555, 560-561 (1975)	29
Metevier v. Therrien, 80 Mich 187, 190-191; 194-196 (1890)	21

	Page
Mooney v. Holohan, 294 U.S. 103, 113, 55 S. Ct. 340, 341, 79 L.Ed. 791 (1935)	
People v. Milton, 393 Mich 234 (1974), 224 NW2d 266	15
People v. Percy Harris, Jr., 43 Mich App.746 (1972)	24, 25, 28
People v. Sattler, 20 Mich App 665, 174 NW2d 605 (1974)	15
Pitlock v. Hamtramck, CSC 44 Mich App 410, 413 (1973)	22
Plessy v. Ferguson, 163 U.S. 537, 558, 4 Led. 256- S. Ct. 1138, 1146 (1896)	19
Powell v. Alamaba, 278 U.S. 45, 66-67 (1932)	
Rand v. CSC, 71 Mich App 581, 586 (1976)	21
Shelby Twp. Fire Dept. v. Shields, 115 Mich App 98, 104-105 (1982)	22
Speed v. Common Council, 98 Mich 360, 364-365 (1894)	21
Ture v. Ecourse City Council, 331 Mich 380, 387 (1951)	21

United States v. Alderman, 394 U.S. 185 (1969) 28

United States v. United States District Court el al, Plamondon, etc. al, Real Parties In Interest, 407, U.S. 297, 314-321; 323-324 (1972) 22, 25

Van Antwerp v. City of Detroit, 47 Mich App 707, 717 (1973) 16

Young v Young, 211 Mich App 446, 448-449 (1995) 28

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution 2, 3, 4
Amendments 1, 4, 5, 6 & 14

18 U.S.C. 2511 (1)(a)(c)(d)

18 U.S.C. 2518 (8)(9)

28 U.S.C. 1257 (a) 2, 5

28 U.S.C. 1652 2, 5, 27

MCL 38.514 8, 17, 20, 25

MICHIGAN STATUTES

MCL 38.556 (d) Section No. 6 Subparagraph No. 2, (the May 14, 1976 Amendment)	9, 16, 18, 26
MCL 750.539	10
MCL 752.11	10, 21
MCLA 750.478	10, 21
MCLA 600.4401 (3)	10, 16
MCLA 600.5855	10, 18
MCLA 600.305, 309, 310	15

MICHIGAN SUPREME COURT ADMINISTRATIVE ORDER

Michigan Supreme Court Administrative Order 1994-4	10, 17, 18

MICHIGAN CONSTITUTION OF 1963

Article No. 1, Section Nos. 1, 2, 5, 17, and 20	6, 7
Article No. 6, Section No. 28	7, 29
Article No. 9, Section No. 24	8, 18, 26
Article No. 1, Section No. 10	6, 21

UNITED STATES CONSTITUTION

Article No. 1, Section 10	3, 21
Article No. 4, Section No. 1	3, 18, 21
First Amendment	23
Federal Judiciary Act of 1789 Section No. 34	18
HAMTRAMCK CITY CHARTER	18, 19
Article No. XIII, Section No. 4	16, 18, 20, 26
Hamtramck (ROA) Collective Bargaining Agreement	16, 18, 19, 20, 25

OPINIONS BELOW

1. The Wayne County Circuit Court, after a hearing on June 30, 1993, issued an order dated June 30, 1993. Page Nos. 29, and 30, of the transcript of that proceeding, that are essential to a review of this matter is attached at Page No. 79 of the Appendix.

2. The Michigan Court of Appeals denied Petitioner's Complaint for Mandamus in an Order without an opinion, dated May 30, 1995, split from the case in-chief, Michigan Court of Appeals No. 166601, into a separate case No. 184844, set forth at Page No. 1 of the Appendix.

3. The Michigan Supreme Court denied Petitioner's Delayed Application for Leave To Appeal, in an order, without an opinion, dated February 23, 1996, set forth at Page No. 2 of the Appendix.

4. The Michigan Supreme Court also denied Petitioner's Motion For Rehearing, and/or Reconsideration in an order, without an opinion, dated April 29, 1996, set forth at Page No. 4 of the Appendix.

The Michigan Supreme Court entered an order on February 23, 1996, denying Petitioner's Delayed Application for Leave To Appeal, without a written opinion. A copy of that order is attached beginning at Appendix No. 2.

The Michigan Supreme Court entered an order on April 29, 1996, denying Petitioner's Motion For Reconsideration, without a written opinion. A copy of that order is attached beginning at Appendix No. 3.

JURISDICTION

That this matter is brought before this Honorable Court under 28 U.S.C. 1257 (1); 28 USC 1652; the 1st, 4th, 5th, 6th, and 14th Amendments of the United States Constitution.

The judgment and order, without an opinion, by the Michigan Supreme Court was entered on February 23, 1996, at Appendix No. 2. Petitioner's Motion For Rehearing, and/or Reconsideration was denied on April 29, 1996, at Appendix No. 3. This petition is filed within 90 days of the denial of rehearing. Jurisdiction of this Court to review the judgment in question through certiorari is conferred by 28 U.S.C. 1257 (a); 28 U.S.C. 1652 and also 28 U.S.C. 2403 (b) may apply, as well as the 1st, 4th, 5th, 6th, and 14th Amendments of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent portions of constitutional and statutory provisions involved in this case are:

1. Article No. I, Section No. 10, of the United States Constitution states in pertinent part as follows:

> "No state shall . . . . . ; pass any Bill . . , ex part facto Law, or law impair the Obligation of Contracts."

2. Article IV, Section No. 1, of same;

> "Section 1. Full faith and credit shall be given in each state to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may be general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and, the effect thereof."

BILL OF RIGHTS OF THE CONSTITUTION OF THE UNITED STATES

3. Article I;

Congress shall make no law . . . abridging the freedom of speech,"

4. Article IV;

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause; supported by oath or affirmation, and particularly describing the place to be searched, and the persons to be seized.

5. Article V;

"No person shall be . . . . deprived of life, liberty or property, without due process of law:"

6. Article VI;

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . .to have compulsory process for obtaining witness in his favor."

7. Article IVX, Section No. 1;

"No State shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any state drprive any person of life, liberty, or properly, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. 28 U.S.C. 1652. State laws as rules of decision.

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States in cases where they apply. (June 25, 1948, Ch. 646 § 62 Stat. 944). *Erie R. v Tompkins,* 304 U.S. 64, 58 s. cT. 817, 823 (1938).

9. 28 U.S.C. 1257 State Courts; certiorari.

"Final judgment or decrees rendered by the highest court of the State in which a decision may be had, may be serviced by the United States Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of laws of the United States, and the decision is in favor of its validity."

MICHIGAN CONSTITUTION OF 1963

10. Article No. 1, Section No. 2;

    "Sec. 2. No person shall be denied the equal protection of the laws, nor shall any person be denied tne enjoyment of his civil or political rights or be discriminated against in the exercise thereof."

11. Article No. 1, Section No. 10;

    "Sec. 10. No . . . . law inpairing the right of contract shall be enacted."

12. Article No. 1, Section No. 13;

    "Sec. 13. A suitor or any court of this state has the right to prosecute or defend his suit either in his own property, person or by an attorney."

13. Article No. 1, Section No. 17;

    "Sec. 17. No person shall be . . . deprived of life, liberty of property, without due process of law. The right of all individuals, firms, corporations, and voluntary associations to fair and just treatment in the course of legislative, and executive investigations and hearings shall not be infringed."

14. Article No. 1, Section No. 19;

"Sec. 19. In all prosecutions for libels the truth may be given in evidence to the jury; and if it appears to the jury that the matter charged as libelous is true and was published with good motives and for good ends, the accused shall be acquitted."

15. Article No. 1, Section No. 20;

"Sec. 20. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury. . . to be confronted by witnesses against him; to have compulsory process for obtaining witnesses in his favor."

16. Article No. 6, Section No. 28;

"Sec. 28. All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole

record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

17. Article No. 9, Section No. 24;

"Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby."

MICHIGAN STATUTES

18. MCL 38.514;

Sec. 14. (1) The tenure of each person holding an office, place, position or employment under * * * this act shall be only during good behavior and efficient service, and any * * * person may be removed or discharged, suspended without pay, and deprived of vacation privileges or other special privileges * * * by the civil service commission * * * for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, a violation of * * * this act or of the rules of the commission, or for any other failure of good behavior, or for any other acts of misfeasance, malfeasance, or

nonfeasance in office. However, a member of any fire or police department encompassed by this act shall not be removed, discharged, reduced in rank or pay, suspended, or otherwise punished except for cause, and in no event until he or she has been furnished with a written statement of the charges and the reasons for the actions. In addition all charges shall be void unless filed within 90 days after the date * * * the violation occurred."

19. MCL 38.556 (d) Section No. 6, Subparagraph No. 2;

(d) Vested retirement benefits; member leaving employment before eligible to retire, pension. A member who has 10 or more years of service shall have vested retirement benefits, not subject to forfeiture on account of disciplinary action, charges, or complaints. If the member leaves employment before the date the member would have first become eligible to retire as provided in subparagraph (a), for any reason except the member's retirement or death, the member shall be entitled to a pension which shall begin the first day of the calendar month next following the month in which the member's written application for the pension is filed with the board, on or after the date the member would have been eligible to retire had the member

continued in employment. The board shall grant the member the benefits to which the member is entitled under this act, unless the member resumes service, in which event the pension shall be further deferred with service years of credit until the member actually retires.

20. MCLA 600.4401 (3)

(3) The supreme court may provide by rule for the referral of an action from the court of appeals to the circuit court to determine and report its findings of fact or to hear and decide the action if substantial fact finding is necessary to determine the applicability of mandamus relief.

21. MCLA 750.539(c)

Sec. 539c. Any person who is present or who is not present during a private conversation and who wilfully uses any device to eavesdrop upon the conversation without the consent of all parties thereto, or who knowingly aids, employs or procures another person to do the same in violation of this section, is guilty of a felony punishable by imprisonment in a state prison for not more than 2 years or by a fine of not more than $2,000.0, or both.

22. MCLA 600.5855

Sec. 5855. If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

23. MCLA 752.11

Sec. 1 Any public official, appointed or elected, who is responsible for enforcing or upholding any law of this state and who wilfully and knowingly fails to uphold or enforce the law with the result that any person's legal rights are denied is guilty of a misdemeanor.

24. MCLA 750.478

Sec. 478 WILFUL NEGLECT OF DUTY - When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, where no special

provision shall have been made for the punishment of such delinquency, shall be deemed a misdemeanor, punishable by imprisonment in the county jail for not more than 1 year or by a find of not more than 500 dollars.

MICHIGAN SUPREME COURT ADMINISTRATIVE RULE 1994-4

A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990. The prior published decision remains controlling authority unless reversed or modified by the Supreme Court or a special panel of the Court of Appeals as provided in this order. A panel which follows a prior published decision only because it is required to do so shall so indicate in the text of its opinion, citing this administrative order and providing a statement of wherein and why it disagrees with the prior published opinion.

When a panel of the Court of Appeals indicates in its opinion that it is following a prior published decision only because it is required to do so, the opinion in the case at bar shall be published in the official report of opinions of the Court of Appeals, and the Chief Judge of the Court of Appeals shall within 14 days after release of the opinion complete a poll of the judges of the Court of Appeals to ascertain whether a special panel of

that Court, as described *infra*, should be convened to rehear the case for the purpose of resolving the conflict which would have been created but for the provisions of this order. This procedure is to be invoked for outcome-determinative questions only. An order reflecting the result of the poll shall enter immediately thereafter and the order shall be published in the official report of opinions of the Court of Appeals.

If a majority of the judges of the Court of Appeals vote in favor of convening a special panel, an order to that effect shall be entered. If a majority of the judges of the Court of Appeals does not vote in favor of convening a special panel, an order to that effect shall be entered. The time limits for moving for rehearing or for filing an application for leave to appeal to the Supreme Court shall be calculated from the date of entry of the order declining to convene a special panel or, if a panel is convened, from the date of the release of the opinion of the special panel.

- An order directing the convening of a special panel shall vacate the prior opinion in the case at bar. The parties shall be permitted to file supplemental briefs and shall be entitled to oral argument before the special panel.

  A special panel convened pursuant to this administrative order shall consist of 7 judges of the Court of Appeals selected by lot, except that judges who participated in either the controlling decision or the decision in the case at bar may not be selected. The decision of the special panel

shall be published and is binding on all panels of the Court of Appeals unless reversed or modified by the Supreme Court.

When a poll of the judges of the Court of Appeals is taken pursuant to this order, the Chief Clerk of the Court of Appeals shall notify the Clerk of the Supreme Court of the poll and shall provide a copy of the order reflecting the result of the poll.

This administrative order shall take effect on May 1, 1994, and shall remain in effect until April 30, 1996, or until the further order of this Court.

Administrative Order 1990-6 is rescinded, effective May 1, 1994.

[Entered April 27, 1994.]

STATEMENT OF THE CASE

1. That Petitioner filed a **Motion** and **Brief for Writ of Mandamus (MCR 3.305 (A)(2),** in the **Michigan Court of Appeals,** on **April 13, 1995,** seeking relief different from that contained in the **Motion** and **Brief For Mandamus (filed in the Wayne County Circuit Court,** on **January 26, 1993),** seeking implementation of the **"fraudulent" February 4, 1985, Federal Court Consent Judgment,** on **April 13, 1995;** in direct response to that court's opinion and decision dated **March**

20, 1995, in ***Goodridge v Ypsilanti Twp Bd,*** **209 Mich App 344, 351 (1995).**

2. That inopposite of the invidiously, racially, discriminatory animus, ***Griffin v Breckenridge*** **403 U.S. 101, 91 S. Ct. 1790, 29 L. Ed. 338 (1971)** shown Petitioner, the Michigan Court of Appeals in ***Goodridge*** at **351** granted relief under **MCL 38.514, MSA 5.3364,** which in the words of Judge Griffin's dissenting opinion at **354** that that court granted relief that . . . .

"Neither the petitioner nor the respondent has requested such action. Further, the issue ruled upon has not been preserved, raised, briefed or argued."
[Emphasis added]

3. That notwithstanding the relief if given to ***Goodridge,*** who is white, the **Michigan Court of Appeals** denied Petitioner's **Motion For Mandamus** on **May 30, 1995,** for the following reason:

"The court orders that the complaint for Mandamus is dismissed for lack of jurisdiction over municipal officers, MCR 3.305 (A)(2)."

4. That the jurisdiction of the Court of Appeals is entirely statutory under **MCLA 600.308; 309;*310 People v Milton,*** **393 Mich 234 (1974), 224 NW2d**

266; and/or by assignment by the **Michigan Supreme Court** under **MCLA 600.4401 (3).**

5. That the jurisdiction of the Court of Appeals attaches when a claim of appeal is filed, and the appeal cannot be dismissed except on stipulation, special motion, and notice, or the court's own motion, ***People v Sattler*** **20 Mich App 665, 174 NW2d 605 (1974).**

6. That this matter originally filed in the trial court **(Wayne County Circuit Court)** on **January 26, 1993,** as a **Motion For Writ of Mandamus,** etc., denied in part, in direct response to the failure of Petitioner's fired, former attorney, Eleanor Cattron-Smith, to respond to Respondent's **Motion For Summary Disposition MCR 2.116 (C)(8), Docket No. 21,** of the lower court case, **No. 93-302439 AW;** and granted in part on **May 26, 1993;** the court being precluded from dismissing the matter in its entirety, because of the then unknown **fraudulent (Article No. 9, Section No. 24, of the Michigan Constitution of 1963; MCL 38.556 (D) Section No. 6, subparagraph No. 2; Article XI, of his 1977-1979, Collective Bargaining Agreement; Article XIII, Section No. 4, of the Hamtramck City Charter; and 28 U.S.C. 1652), Federal Court Consent Judgment,** dated **February 4, 1985,** because said judgment sought to diminish Petitioner's fully matured, fully vested 100% of one (1/2) pay pension benefit, ***Van Antwerp v City of Detroit,*** **47 Mich App 707, 717 (1973); *Campbell v Judge's Retirement System,* 378 Mich 169, 183 (1966).**

7. Therefore, there is no factual or legal support for the Court of Appeals' claim that it lacked jurisdiction over municipal officers in its order dated **May 30, 1995,** dismissing Petitioner's **Motion For Writ of Mandamus.**

8. That the failure of attorney **Smith** to respond to Appellee's motion, **MCR 2.116 (C)(8),** under **MCR 2.116 (G)(3)(4)** constituted both ineffectiveness and inadequacy of counsel.

9. That under the **Doctrine of Ripeness** Appellant's motion came alive and appropriate for refiling in the Court of Appeals subsequent to another three (3) judge panel of this Court reaching a decision in ***Goodridge v Ypsilanti Twp Bd.,*** **209 Mich App 344, 347, 351 (1995),** relying on **MCL 38.514,** etc., and **MCR 7.216 (A)(7),** ordering a written opinion to be filed on **March 20, 1995, at 9:20 a.m.**

10. That the Supreme Court's Administrative Order 1994-4, Resolution of Conflicts in Court of Appeals Decisions, states in part as follows:

> **" A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990. The prior published decision remains controlling authority unless reversed or modified by the Supreme Court or a special panel of the court of Appeals as provided in this order."**

11. That nevertheless, when Petitioner refiled his **Motion for Writ of Mandamus** in the Court of Appeals on **April 13, 1995**, citing ***Goodridge*** as controlling, that court **denied** same on **May 30,1995**.

12. The **"fraudulent" (MCLA 600.5855), February 4, 1985 Federal Court Consent Judgment** was in direct violation of **Article No. 9, Section No. 24 of the Michigan Constitution of 1963; MCL 38.556 (D); Article No. 4, Section No. 1, of the United StatesConstitution; Article No. XIII, Section No. 4 of the Hamtramck City Charter; Article No. 11** of Petitioners **1977-1979 Collective Bargaining Agreement** and, the state's highest appellate court was under an independent, affirmative, self-regulating duty to follow ***Goodridge supra* 351**, under the **Supreme Court's Administrative Order No. 1994-4; Section No. 34,** of the **Federal Judiciary Act of 1789**, ***Erie R. Co. v Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 823 (1938); 28 U.S.C. 1652,** and/or overrule same on constitutional grounds; but none other.

13. That Petitioner was entitled to a fully **matured**, fully **vested** one (1/2) half pay pension benefit as set forth in **Article XIII, Section No. 4,** of the charter above, and as a matter of law with the May 14, 1976 amendment to **MCL 38.556 (D)**which vested the pensions of policemen after (10) or more years service in the instant case,at

the flat rate of one (1/2) half pay; notwithstanding the fact that the statute contains a different method 19 of computing the minimumvalue of the pensions of State Policemen, and/or other local criminal justice agencies who may be enrolled in the state plan, and/or who may employ a higher value than the state minimum ***Plessy v Ferguson*, 163 U.S. 537, 558, 4 Led 256, - - S Ct. 1138, 1146 (1896).**

14. That subsequent to the Court of Appeals denial of Appellant's **Motion For Mandamus** on May 30, 1995, Appellant discovered that **Chapter XIII, Section Nos. 1-19, of the Hamtramck City**Charter governing **Pensions** for **Policemen and Firemen Page Nos. 124-130**, had been incorporated by reference in **ARTICLE XI PENSIONS AND RETIREMENTS**, of his **Collective Bargaining Agreement** in the **1966-1967** Labor Contract, at **Page No. 6, Paragraph No. 5**, of same and states as follows:

" All police department personnel shall be subject to and entitled to pensions and retirements as provided in the charter amendment adopted at the Special Election on November 8, 1938.

The charter amendment is incorporated hereto by reference. Provided, however, charter amendment will be mutually discussed Bannan v Saginaw 420 Mich 376, 389, 390 (1985)."

15. That Petitioners **Collective Bargaining Agreement, 1977-1979, Article No. XIII,** states as follows:

> **"In any trial board proceeding, the employee shall have reasonable time to prepare for the defense against charges preferred and shall have the right to counsel and shall be afforded due process.**

MCL 38.514, states in part, as follows:

> **"At such hearing, the burden shall be on the removing officer."**

Chapter IX-A, Section No. 39, of the Hamtramck City Charter states in part as follows:

> **"The burden of proof of charges preferred shall be upon the party preferring same."**

In ***Gantz v City of Detroit*, 399 Mich 649, 652 (1973),** the **burden of proof** has been held to mean that a fact in dispute must be proven by evidence presented before the civil service commission. No evidence was presented before the commission proving that Petitioner's **January 5, 7, 1979** media interviews were**(untruthful), Section 84; (neglect of duty or inattention to duty), Section 124.10;** or **(making a false statement), Section 124.19.**

Only a TV and an audio tape of the media interviews was presented before the Civil Service Commission by the party preferring the charges **(Chief of Police, John Sitek)** as proof that Petitioner was in violation of the above said charges; according to Commission Chairman, **Edward Liska, A-12, Page No. 27.**

As a matter of law, the Respondents were duty bound to uphold the Petitioner's labor contract under **MCL 752.11**; **MCLA 750.478** and **Article No. 1, Section No. 10, of the Michigan Constitution of 1963,** and **Article No. 1, Section No. 10 and Article No. 4, Section No. 1, of the United States Constitution;** and its own rules ***Rand v CSC,* 71 Mich App 581, 586 (1976).**

16. That inopposite of CSC Chairman **Liska's** conclusion at **A-12, Page No. 31,** that it was **not** the job of the commission to determine the **procedural matter,** i.e., the validity and application of the five (5) day rule of **Article XIII** of Petitioner's labor contract, and/or the ninety (90) day rule of **MCL 38.514** and the **free speech** issue, the commission could **not** assume that it had the authority to disregard Petitioner's substantial rights to **due process** and **equal protection** of the law incorporated in the contract language and the statute, ***Ture v Ecourse City Council,* 331 Mich 380, 387 (1951); *Dullan v Wilson 53 Mich* 392, 412, 413 (1883); *Speed v Common Council* 98 Mich (1894)** and ***Metevier v Therrien,* 80 Mich 187, 190-191; 194, 196 (1890).**

17. That it was a denial of due process and equal protection of the law for the CSC to have decided the matter of Petitioner's dismissal from employment without giving factually based reasons for its **August 23, 1979** decision to uphold Petitioner's dismissal **A-13, *Shelby Twp. Fire Dept. v Shields*, 115 Mich App 98, 104-105 (1982).**

18. That with respect to the **July 11, 1980,** arbitration award of arbitrator **William J.McBrearty, A-14,** he resurrected a charges, **Section 124.8 (conduct unbecoming an officer) *Pitlock v Hamtramck* CSC 44 Mich 410, 413 (1973)** for which no penalty was imposed by Director Jablynski, **A-11;** that was never before the civil service commission; and not before him, **Local 1277 *AFSCME v Center Line* 414 Mich 642, 655 (1982).**

19. That with respect to the **fraudulent February 4, 1985, Federal Court Consent Judgment,** it was the handiwork of since retired Sixth Circuit Court of Appeals Judge **Ralph B. Guy, Jr.,** in an attempt to cover-up the fact that he had lied under oath to conceal the existence of the Southfield NSA intercept station at Ten Mile Road, and Northwestern Hwy., in the City of Southfield; because illegally electronically intercepted telephone conversations referenced in ***United States v United States District Court et al, Plamondon* etc. al, *Real Parties In Interest*, 407 U.S. 297, 314-321; 323-324 (1972)** had been simultaneously intercepted at both the since closed San Francisco NSA intercept station and the

Southfield station.

Guy had deliberately played the **"race card,"** by pointing the finger at the San Francisco chapter of the now defunct Black Panther Party as the point of interception to evade public criticism over invasion of **First Amendment rights,** referenced on **Page Nos. 367-372,** of the **Puzzle Palace,** James Bamford.

20. That on **Page No. 372** of the **Puzzle Palace** Paragraph No. 5 **Guy** played the **"race card"** for a second time in the so-called **Weathermen** case, by pointing the finger at the **Chicago Chapter of the (BPP)** and the **1968 Democratic Convention** as the point of interception of the defendants; while also **deliberately concealing** the fact that the defendants had been simultaneously intercepted by the Southfield intercept while at the **April, 1969,** Flint, Michigan **"war council".**

The first files were turned over to the plaintiff's on **May 11, 1976, *Hampton v Hanrahan* 600 F2d 600, 641 Paragraph No. 8 (1979).** It was also the same date that the United States Senate Judiciary Committee approved **Guy's** nomination to be **Federal District Judge.**

21. That on **June 14, 1976,** the Chicago FBI office completed the turnover of what was then claimed to be the extent of its **Cointelpro illegal electronic** surveillance files of the Chicago (BPP)at **643, Paragraph No. 5.** Included were surveillance files surrounding the **June 4, 1969,** FBI raid on the

(BPP) headquarters to arrest a fugitive. One must go back to **610, Paragraph No.2,** to see that (BPP) was already under illegal electronic interception before the **June 4, 1969,** raid.

22. Three (3) days after the Chicago FBI's turnover of its Cointelpro files on **June 14, 1976, Judge Guy** had Petitioner's Civil Action No. **74-71710** for damages against the Hamtramck Police Department for two **"bad faith"** criminal prosecutions in ***People v Percy Harris, Jr.*, 43 Mich App 746 (1972)** transferred to his docket on **June 17, 1976.**

23. Guy knew that the Petitioner had been illegally electronically intercepted simultaneously from both the Chicago and the Southfield NSA intercept station during two (2) telephone conversations, **July 1, 1969** and **December 13, 1969,** with his cousin Dorothy Johnson. The calls had been made from the (BPP) day care center; the first of which was to wish Petitioner a belated happy birthday **(June 4, 1937);** and the second was a discussion of the **December 4, 1969, Chicago police raid on the BPP headquarters,** in which Panther Chairman **Fred Hampton and Mark Clark** were killed by police officers during the raid.

24. That the reason for Petitioner's cousin's December 13, 1969, telephone call from the (BPP) day care center to him in the City of Hamtramck, was that she wanted his opinion as a police officer, as to the propriety of the Chicago Police raid, upon the BPP Headquarters, as re-enacted by police, for CBS-TV and shown on the 7:00 p.m. newscast on

December 12, 1969, ***Hampton*** at **615, Paragraph No. 5.**

25. How he, Guy, knew, was the **September 9, 1971** FBI response to Petitioner's **August 30, 1971** complaint to Guy as Assistant U.S. Attorney asking for an investigation of the then existing criminal conviction in **43 Mich App 746 (1972) A-16** and **A-17.**

26. That if Judge Guy had not illegally **(28 U.S.C. 455 (b)(1)(3)(e); 18 U.S.C. 241 and 242,** interfered with Petitioner's civil action Nos. **74-71710** and **77-71217;** the NSA Southfield intercept station would have been exposed during discovery, and he would have been forced to resign from the bench and face civil liability in the ***Plamondon*** and ***Weatherman*** case under **42 U.S.C. 1981, 1983, 1985 (2)(3),and 1988, of the the Civil Rights Act of 1871.**

REASONS FOR GRANTING WRIT

1. That MCL 38.514, sets a ninety (90) day time limit wherein which charges must be brought against a police officer for discipline. The charges brought against Petitioner on May 18, 1979, were plainly beyond the ninety (90) day time limit from the date of the event January 5, 7, 1979, and were void.

2. That Petitioner's Collective Bargaining Agreement, Article XIII, sets forth a five (5) day

time limit wherein charges must be brought against a Hamtramck Police Officer for discipline. The charges brought against Petitioner on May 18, 1979, were plainly beyond the five (5) day time limit from the date of the event and were void.

3. MCL 38.556 (D), Section No. 6, subparagraph No. 2, sets forth a ten (10) year minimum for a vested pension in the State of Michigan payable on the month following the date that he would have first become eligible to retire had he remained in service for a length of service retirement. Petitioner was a Hamtramck Police Officer from November 28, 1965, until August 23,1979; therefore he was vested and plainly entitled to a pension as matter of law, starting on December 28, 1985.

4. Article No. XIII, Section No. 4, of the Hamtramck City Charter sets the rate pensions for police and firemen at a flat rate of one-half (1/2) pay, with no provision for prorating same under any conditions. Therefore Petitioner was entitled to a one-half (1/2) pay pension when he would have first become eligible to retire on November 28, 1985, payable on December 28, 1985; notwithstanding the fact that he did not complete the normal twenty (20) years length of service, based on the May 14, 1976, amendment to MCL 38.556 (d).

5. Article No. 9, Section No. 24, of the Michigan Constitution of 1963, made the pension benefit of the state or any of its political

subdivisions a contractually right, that cannot be diminished or otherwise impaired. Therefore once Petitioner became vested on May 14, 1976, at the rate of one-half (1/2) pay, it could not be diminished for any reason.

6. That under the Rules of Decision in Civil Cases in the United States Courts, state law is binding under Section No. 34, of the Federal Judiciary Act of 1789, and 28 U.S.C. 1652, *Erie R. Co. v Tompkins,* 304 U.S. 78 therefore the February 4, 1985, Consent Judgment which sought to diminish Petitioner's one-half (1/2) pay pension benefit to sixty (60%) percent of one-half (1/2) pay is plainly illegal on its face, and must be vacated.

7. That the state's intermediate appellate court (Michigan Court of Appeals) has treated Petitioner differently than it treated a white litigant, because he is black, thereby violating his 5th and 14th Amendment rights to a fair trial, before a fair and impartial magistrate; and due process and the equal protection of the law.

CONCLUSION

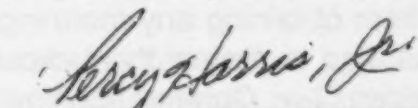
That the May 30, 1995, Order, denying Mandamus by the Michigan Court of Appeals; and the February 23, 1996 and the April 29, 1996, orders of the Michigan Supreme Court are simply part of a continuum of a judicially orchestrated

cover-up; first initiated by since retired Sixth (6th) Circuit of Appeals Judge Ralph B. Guy Jr.,on June 14, 1976. Then an attempt to continue it by since retired Michigan Court of Appeals Judge Michael J. Connor on June 21, 1994.

The objective of the cover-up has at all times been three-fold, prevent discovery and disclosure of the root cause (NSA---Minaret ----FBI -- Cointelpro Subversive File No. 691767H) Michigan Attorney General - Michigan State Police Red Squad Subversive File No. 9732604, fabricated when released to Petitioner to conceal the FBI connection, to read No. 0732604, instigated the bad faith criminal prosecution in *People v Percy Harris, Jr.* 43 Mich App 746 (1972); prevent Petitioner from obtaining any meaningful recovery of damages, and to protect the judicial reputations of then Judges Guy, Connor, Michigan Court of Appeals Judge Roman Gribbs; Michigan Supreme Court Justice, Patricia Boyle, who was the appellate prosecutor in Petitioner's criminal case; Mrs. Boyle's husband, Terrence K. Boyle, who was the county grand jury prosecutor during the 1969-1970 time frame; and Chief Justice, James Brickley, who was Assistant United States Attorney for the Eastern District of Michigan and Guy's immediate supervisor during the indictments of the Plamondon and Weathermen defendants, 18 U.S.C. 2511 (a)(c)(d); 18 U.S.C. 2518 (8)(9); 18 U.S.C. 2520 (a)(b); MCLA 750.539; MSA 28.807; *Young v Young*, 211 Mich App 446, 448-449 (1985); *United States v Alderman*, 394 U.S. 165, 185 (1969); *Hampton* at 610, Paragraph No. 2, etc.

Factually different, but directly analoguous to the instant case, is *Young v Young*, supra, the State Court of Appeals allowed a white female litigant to recover damages against her former husband for interspousal wire-tapping under the federal statute; but denies Petitioner the right to have the documentary evidence of the Federal Government's illegal electronic interception of his private telephone conversation found in the State Red Squad Subversive File certified to the court under Article VI, Section No. 28 of the Michigan Constitution of 1963, *Justewicz* at 560-561, so that he cannot prove his claim for damages against both the federal and state governments.

Respectfully submitted,



Percy Harris, Jr., In Pro Se
P.O. Box 14231
Detroit, Michigan 48214
1-810-968-8362
1-313-267-6227

Dated: September 28, 1996

c:\ussupct.16

ORDER

Mark J. Cavanagh
Presiding Judge

PERCY HARRIS V CITY OF HAMTRAMCK

Docket # 184844

Michael J. Kelly
Kathleen Jansen

L.C. # 93-302439 AW

Judges

The Court orders that the complaint for mandamus is DISMISSED for lack of jurisdiction over municipal officers. MCR 3.305 (A)(2).

The Motion for Immediate Consideration is denied.

A true copy entered and certified by Ella Williams, Chief Clerk, on

SEAL
State of Michigan
Court of Appeals

s/s May 30, 1995
Date

s/s Ella Williams
Chief Clerk

ORDER

Entered: February 23, 1996 Michigan Supreme Court

Lansing, Michigan

James H. Brickley
Chief Justice

103772

Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

PERCY HARRIS, JR.,
Plaintiff-Appellant,

v

SC: 103772
COA:184844
LC:93-302439-AW

CITY OF HAMTRAMCK, HAMTRAMCK CITY COUNCIL; MICHAEL ZEBROWSKI, Controller, JOSEPH J. GRZECKI, Treasurer,
Defendants-Appellees.

On order of the Court, the delayed application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

40220

(SEAL)
Michigan Supreme Court

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

s\s February 23,19 96 **s/s Corbin R. Davis**
Clerk

ORDER

Entered: April 29, 1996 **Michigan Supreme Court**
Lansing, Michigan

103772 (20)

James H. Brickley
Chief Justice

Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

PERCY HARRIS, JR.,
Plaintiff-Appellant,

v

SC: 103772
COA: 184844
LC:93-302439-aw

CITY OF HAMTRAMCK, HAMTRAMCK CITY COUNCIL; MICHAEL ZEBROWSKI, Controller, JOSEPH J. GRZECKI, Treasurer,
Defendants-Appellees.

On order of the Court, the motion for reconsideration of this Court's order of February 23, 1996, is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

60423
(SEAL)

Michigan Supreme Court I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true andcomplete copy of the order entered at the direction of the Court.

s/s April 29, 19 96 s/s Corbin R.Davis
Clerk

2377 Grayling Street
Hamtramck, Michigan 48212
November 7, 1978

Mr. John Sitek
Chief of Police
Hamtramck, Michigan 48212

Dear Chief Sitek:

I am in receipt of your letter of Friday, November 3, 1978. You state that, "certain allegations," have been made against me relative to my testimony given in the case entitled, People vs. Lawrence Williams, Wayne County Circuit Court 78-329330, before the Honorable Horace W. Gilmore. Further, you do not identify the source of your allegations, nor do you indicate whether in fact, a formal written complaint has been lodged with your office. Nevertheless, you state that you have commenced an ongoing investigation; therefore at this point in time, I am asking for the names of the persons making those, "certain allegations," copies of the complaint if they exist, or in the alternative, a more detailed bill of particulars in the matter.

s\s Percy Harris, Jr.
Percy Harris, Jr.,
Detective Lieutenant
Hamtramck Police Department

App. 6

Delivered in person at 11:30 a.m.
Tuesday, November, 7, 1978 —
Chief's office

App. 7

City of Hamtramck
Department of Police
Hamtramck, Michigan 48212

January 12, 1979

Lieutenant Percy Harris
Hamtramck Police Department
Hamtramck, Michigan 48212

Lieutenant Harris:

Please be advised pursuant to Articles XIII and XIV of the City of Hamtramck Police Ranking Officers Association Collective Bargaining Agreement, that you are hereby notified your statements made on interviews conducted on WDET-FM and broadcase through their facilities on Friday, January 5, 1979 at or about 7:30 p.m., and Channel 50, WKBD and telecase through its facilities on Sunday, January 7, 1979, at or about 11:30 p.m., wherein you imputed criminal activity to the members of the Hamtramck Police Department, constitutes conduct detrimental to the efficient operation of the Police Department, thereby rendering your statements to be conduct unbecoming a police officer, insubordination which may result in your removal, discharge, suspension or reduction in rank or pay.

/s/ John Sitek
JOHN SITEK
Chief of Police

App. 8

RECEIVED BY \S\ Percy Harris, Jr. DATE 1/13/79
TIME 11:50A.M.

SERVED BY \S\ Phillip M. Maczewish DATE 1-13-79
TIME: 11:50 A.M.

CC: Director
Civil Service
Legal Dept.
Cahnam

App. 9

TYLER AND CANHAM, P.C.
Attorneys and Couselors at Law
400 Renaissance Center, Suite 1010
Detroit, Michigan 48243

January 17, 1979

Mr. William L. Cahalan
Wayne County Prosecutor
1441 St. Antoine
Detroit, Michigan 48226

Dear Mr. Cahalan:

Please be advised that this office represents the City of Hamtramck, a minicipal corporation, located in the County of Wayne, State of Michigan.

In our capacity as their legal representatives, we respectfully request assistance from your department in investigating certain charges and allegations made against certain members of the Hamtramck Police Department.

During interviews conducted on WDET-FM and broadcast through its facilities on Friday, January 5, 1979 at about 7:30 p.m., and again on WKBD-TV50 and telecast through its facilities on Sunday, January 7, 1979 at about 11:30 p.m., Lieutenant Percy Harris, Second Command Officer of the Hamtramck Police Department, imputed criminal activity to members of the Hamtramck Police Department.

Mr. William L. Cahalan
Page Two
January 17, 1979

We are requesting intervention by the Prosecutor's Office of Wayne County for the reason that it is imperative that the truth or falseness of these charges be determined at the earliest possible moment and the investigation be conducted by an agency outside of the jurisdiction of the City of Hamtramck.

This office will be happy to assist you in supplying you with whatever documentation you need, particularly a videotape transctiption of the telecase of WKBD-TV50 and a recording of the broadcast on WDET-FM.

Once again, Mr. Cahalan, as you can realize, the charges and allegations taint and cloud the effectiveness of law enforcement in the City of Hamtramck. The sooner the charges are investigated and either prosecuted and/or cleared, the better for the citizens of that community.

Very truly yours,
TYLER AND CANHAM, P.C.

/s/ James N. Canham
James N. Canham

JNC/clc

(SEAL)
William L. Cahalan
Prosecuting Attorney
Dominick R. Carnovale
Chief Assistant

800 Frank Murphy Hall of Justice
1441 St. Antoine Street
Detroit, Michigan 48226
Tel: 224-5777

COUNTY OF WAYNE
OFFICE OF THE PROSECUTING ATTORNEY
DETROIT, MICHIGAN

April 26, 1979

Mr. James N. Canham
Attorney at Law
400 Renaissance Center, Suite 1010
Detroit, Michigan 48243

Dear Mr. Canham:

This office has investigated the matter relative to Lt. Percy Harris and statements made by him on the local media. As you are aware, your letter was received at the same time that there was an allegation of perjury against Lt. Harris in this office being presented by the Hamtramck Police Department and involving somewhat the same issue as to his testimony on police preparation of a circuit court case. Once the allegation of perjury was resolved on the basis of insufficient evidence, Lt. Harris and his attorney were talked to relative to comments in the media. Lt. Harris was advised if he has sufficient evidence of actual wrongdoing on the part of the Hamtramck Police Department that he present it to this office.

He has presented nothing other than two incidents which had already been reviewed by other assistant prosecutor's in this office over a period of time and in no case was there sufficient evidence to pursue the matter further.

Hoping this will be satisfactory, I remain,

Very truly yours,

WILLIAM L. CAHALAN
Prosecuting Attorney

s\s Dominick R. Carnovale
DOMINICK R. CARNOVALE
Chief Assistant Prosecuting Attorney

DRC:do

COLLECTIVE BARGAINING AGREEMENT JULY 1, 1977 THRU JUNE 30, 1979

ARTICLE XI, PENSIONS AND RETIREMENTS

Current bargaining unit personnel shall be appropriately subject to and entitled to pensions and retirements as provided in the two (2) amendments. Any future Charter amendments shall be mutually discussed.

ARTICLE XII, STRIKE PROHIBITION

The LODGE will not engage in or sanction strike action during the life of this Agreement.

ARTICLE XIII, DISCIPLINE

No employee shall be removed, discharged, reduced in rank or pay, suspended or otherwise punished, except for cause, and in no event until he shall have been furnished with a written statement of the charges and the reasons for such actions and all charges shall be void unless filed within five (5) days after the occurrence of the alleged violation. In any trial board proceeding, the employee shall have reasonable time to prepare for the defense against charges preferred and shall have the right to counsel and shall be afforded due process.

(SEAL)

CITY OF HAMTRAMCK
DEPARTMENT OF POLICE
Hamtramck, Michigan 48212

John Sitek
Chief of Police

PHONE:
872-1500

May 21, 1979

Lt. Percy Harris Jr.
Hamtramck Police Dept.

Lt. Harris:

You are hereby being placed under suspension and relieved of your police powers and ordered to submit all departmental properties assigned to you pending the hearings and disciplinary findings by the Director of Public Safety on separate charges submitted by myself and charges submitted by Detective Milewski.

s\s John Sitek
John Sitek
Chief Of Police

cc Director
Civil Service
Legal Dept.

App. 15

2377 Grayling
Hamtramck, Michigan 48212
May 23, 1979

TO:Director of Public Safety
Mr. Henry Jablynski

SUBJECT: A request for a two week adjournment in the hearing scheduled for this morning at 10:00 a.m.

On Monday, May 21, 1979 at approximately 9:30 a.m. you gave me a letter notifying me of this hearing. My attorney could not be contacted until Tuesday evening at 4:30 p.m. He will be unable to represent me in this matter at this time due to the fact that he is in trial in Federal Court.

Inasmuch as these charges are in direct violation of Article XIII of the Hamtramck Ranking Officer's Association Collective Bargaining Agreement, I am attempted to contact the president on Ronald Nawrocki for legal representation. mr. Nawrocki has not been available.

One of the charges goes to the heart of the First Amendment Rights guaranteed to all citizens of the United States in the Bill of Rights, of the United States Constitution, as well as the Michigan Constitutio of 1963, therefore I have requested assistance from outside legal agencies who are very sensitive to violations of these rights.

Because of the fact that the Chief has requested my dismissal in each instance, and the foregoing reasons I am respectively requesting a two week adjournment to prepare the proper defense.

\s\ Percy Harris Jr.

(SEAL)

CITY OF HAMTRAMCK
Office of the Director of Public Safety

Henry Jablynski
Director

PHONE: 872-1500

May 23, 1979

Mr. Percy Harris, Jr.
2377 Grayling
Hamtramck, Michigan 48212

RE: Your request for a two week adjournment in the hearing scheduled for this morning at 9:00 a.m.

Dear Mr. Harris:

Despite the last-minute nature of your request, this morning's hearing will be re-set for Wednesday, June 6, 1979 at 9:00 a.m. Please note the time and date.

It is my feeling that a one week's delay would have been adequate, and therefore, since two weeks have been granted as you requested, no further request for a substantial adjournment will be granted.

If your attorney's schedule makes June 6, 1979 impossible, then I would certainly consider moving the hearing up one or two days to the Monday or

Tuesday of that same week, or back to the Thursday, or at most to the Friday of that same week. I would expect adequate notice of such a request, if you find it necessary. Similarly, if 9:00 poses a problem on June 6, some accommodation to move the hearing later in the day would be considered, if you give me enough time to make the change.

Please note that this morning's hearing was set for Chief Sitek's charges only. No date for hearing has yet been set for the charges initiated by Detective Donald Milewski. I mention this because your letter seemed to assume that both charges were set to be heard together today.

As to your First Amendment rights - - I fully intend to see that they are not violated. I will defer consideration of any First Amendment questions until the hearing, of course, but as I understand it no attempt was made to keep you from speaking before you spoke.

The First Amendment protects your right to appear on the interview shows you apparently appeared on, and in your capacity as a private citizen to criticize public officials (and maybe even to criticize incorrectly without fear of prosecution), but it would not insolate you in your capacity as an employee from your obligation to abide by Regulations of the Department requiring truthfulness and forbidding insubordination. As to whether or not allegations

made by you on those interviews do sustain Chief Sitek's charges is a question which I will have to consider at the hearing on June 6, 1979.

As to the Article XIII question you raised, it is my understanding that you were notified of charges in this matter within the required five days by Chief Sitek's letter of January 12, 1979, with the understanding that hearing by me of the matter would be delayed pending investigation by the Wayne County Prosecutor's office of allegations made **by you.** This was done out of fairness to you, and not to prejudice your position. If any question remains on the Article XIII question, it will have to be dealt with at the hearing.

On other thing. Chief Sitek has not **requested** your dismissal. He has **recommended** it. whether you are to be dismissed is my decision, subject to review by the Civil Service Commission.

\s\ Henry Jablynski
Director of Public Safety

cc: Civil Service
Legal Department
Ronald Nawrocki
John Sitek

Received by:_____Date:_____Time:____
Percy Harris, Jr.

s\s G. Kruk Date: 5/31/79Time: 3:15pm

(SEAL)

CITY OF HAMTRAMCK
DEPARTMENT OF POLICE
Hamtramck, Michigan 48212

John Sitek
Chief of Police

PHONE:
872-1500

May 18, 1979

Mr. Percy Harris, Jr.
2377 Grayling
Hamtramck, Mi 48212

Mr. Harris:

Be advised that I am charging you with the following violations of the Hamtramck Police Department Rules and Regulations;

Section 84	Truthfulness required
Section 124-8	Conduct unbecoming an officer
Section 124-9	Insubordination and disrespect
Section 124-10	Neglect of duty or inattention to duty
Section 124-19	Making a false statement

The above mentioned charges have been brought about in part because of your failure to substantiate your accusations to the news media and for other related reasons. In this regard I refer you to my letter of this date to the Director of Public Safety.

s\s John Sitek
John Sitek
Chief Of Police

cc Director
Civil Service
Legal Dept.

Received by: _____ Date:_____ Time:_____
Percy Harris, Jr.

_____ Date:_____ Time:_____
Witness

(SEAL)

CITY OF HAMTRAMCK
DEPARTMENT OF POLICE
Hamtramck, Michigan 48212

John Sitek
Chief of Police

PHONE:
872-1500

May 18, 1979

Director Henry Jablynski
Director of Public Safety
City of Hamtramck
Hamtramck, Michigan 48212

Dear Director Jablynski:

It is my duty at this time to recommend that Detective Lieutenant Percy Harris, Jr. be immediately relieved of active duty, that he be required to surrender his badge, and his service revolver, etc., and that you as Director of Public Safety convene an immediate hearing to determine whether grounds exist for permanent dismissal. I make this recommendation upon the following facts and for the following reasons.

Lieutenant Percy Harris made statements on interviews conducted on WDET-FM and broadcast through their faciities on Friday, January 5, 1979 at or about 7:30 p.m. and Channel 50, WKBD and telecast through its facilities on Sunday, January 7, 1979, at or about 11:30 p.m. wherein he imputed criminal activity to the members of the Hamtramck

Police Department. Upon notification to me by members of the general public who were witnesses to these interviews, Lieutenant Harris was put on notice by my letter of January 12, 1979 that his participation in those interviews constituted conduct detrimental to the efficient operation of the police department, conduct unbecoming a police officer, and insubordination which could result in his removal, discharge, suspension or reduction in rank or pay.

Rather than attempting hastily to make any final determinations exclusively by myself on the impropriety of Lieutenant Harris' allegations during these interviews, perhaps especially because I was myself singled out by Lieutenant Harris during these interviews as an object of his allegations, I thought it proper to submit investigation of Lieutenant Harris' allegations to a neutral party. Consequently, by a letter dated January 17, 1979 and addressed to Mr. William L. Cahalan, the Wayne County Prosecutor, intervention by the prosecutor's office was requestd "for the reason that it is imperative that the truth or falseness of these charges be determined at the earliest possible moment and the investigation be conducted by an agency outside of the jurisdiction of the city of Hamtramck."

In this letter to Mr. Cahalan, the Prosecutor's office for Wayne County was urged expeditiously to investigate Lieutenant Harris' allegations, and either prosecute whatever wrongdoing they might uncover, or clear the agents of law enforcement in the city of Hamtramck on the charges and allegations tainting

and clouding the effective enforcement of their duties.

On April 26, 1979, in a letter addressed to Mr. James N. Canham, an attorney representing the city of Hamtramck in this matter, Dominick R. Carnovale, chief Assistant Prosecuting Attorney for Wayne County, indicated that "Lieutenant Harris was advised [that] if he has sufficient evidence of actual wrongdoing on the part of the Hamtramck Police Department ... he present it to this office." That same letter went on as follows: "He has presented nothing other than two incidents which had already been reviewed by other assistant prosecutors in this office over a period of time and in no case was there sufficient evidence to pursue the matter further." In that Lieutenant Harris has failed to substantiate any of his allegations, it is only proper to assume, and it must be concluded that the charges be made implicating the Hamtramck Police Department in criminal acts were false, damaging, insubordinate, and unbecoming a police officer of his rank and responsibility.

I have not attempted in this letter to identify in complete detail each and every improper allegation made across the air waves by Lieutenant Percy Harris, Jr. In some cases I have conclusive documentary proof of the falsehood of assertions made by him. At any rate, you may be assured that I am available to answer any questions you might have on this matter.

Very truly yours,

s\s John Sitek
John Sitek
Chief Of Police

cc Lieutenant Percy Harris, Jr.
Civil Service Commission
Legal Dept.

(SEAL)

CITY OF HAMTRAMCK
Office of the Director of Public Safety

Henry Jablynski **PHONE:**
xxxxxxxxxxxxxxx **872-1500**
Director

June 22, 1979

Mr. Percy Harris, Jr.
2377 Grayling
Hamtramck, Michigan 48212

Dear Mr. Harris:

Please be advised that the following ruling intends to be dispositive of charges brought against you by Chief of Police John Sitek.

Chief Sitek charged you with violation of Sections 84 (truthfulness required), 124.8 (conduct unbecoming an officer), 124.9 (insubordination and disrespect), 124.10 (neglect of duty or inattention to duty), and 124.19 (making a false statement). The above charges were brought in connection with media interviews broadcast over WDET-FM and Channel 50, WKBD.

A hearing was held before me on June 21, 1979 on these charges, pursuant to notice to yourself, and to the Hamtramck Police Ranking Officers Association. During that hearing testimony was taken, and

supportive exhibits were received, including audio tapes of the media interviews in question. The record reflects that you were present at an informal discussion immediately preceding this hearing, at the end of which your attorney, Mr. Brennan, communicated your intent not to participate in the formal hearing.

Subsequent to the hearing, I have reviewed the testimony, documents at that time submitted to me and other correspondence already in my possession relevant to these charges, and tapes of the media interviews in question.

It is my finding that each charge is adequately supported by the testimony and exhibits, and I therefore find against you on these charges. Serious criminal charges were made by you against the Hamtramck Police Department, and individual police officers in this Department, during

both the television and the radio broadcasts. Subsequent to the making of those accusations, you were invited by the Wayne County Prosecutor's Office, pursuant to a letter written to Mr. William L. Cahalan's office by attorneys representing the City of Hamtramck, to substantiate "your claims of wrong-doing on the part of the Hamtramck Police Department." Your failure adequately to support any charges made by you during those media interviews

compels the conclusion that you are either (1) in violation of Section 124.10 (neglect of duty or inattention to duty), for your failure to substantiate those charges, if possible, and (2) are in violation of Sections 84 (truthfulness required), and/or 124.19 (making of false statement), on the alternative assumption that your charges were known by you at the time you made them to be without substance. I do not find that you were in violation of any departmental regulation by appearing on these interview shows, in your capacity as a ranking police officer of the Hamtramck Police Department, but I do find that, especially since you were representing yourself in those media as a member of the Hamtramck Police Department, you were under a continuing duty to comport yourself in a manner consistent with the Hamtramck Police Department rules and regulations. Pursuant to my findings with respect to these three charges, it is my determination that you shall be removed from your position as an employee of this Department.

You were also charged under Sections 124.8 (conduct unbecoming an officer), and 124.9 (insubordination and disrespect). As noted above, it is my determination that these charges have also been adequately supported by the record, but since your removal has been decided on the basis of the other three charges, it becomes unnecessary to impose any additional, lesser discipline upon you by virtue of these two charges.

Chapter IX-A, Civil Service, provides as follows in Section 30 (Removals; Procedure, Appeal):

"Any officer or employee in the classified civil service, police, and fire departments, and police signal and fire alarms system may be removed, suspended or reduced in rank or compensation by the appointing authority after appointment or promotion is complete, by an order in writing, stating specifically the reasons therefore. Said order shall be filed with the Civil Service Commission and a copy thereof shall be furnished to the person to be removed, suspended or reduced. Such employee may reply in writing to said order within five (5) days fom the date of filing said order with the Civil Service Commission. Any person removed, suspended, or reduced in rank or compensation, may within ten (10) days after presentation to him of the order of removal,

"suspension, or reduction as hereinabove provided, appeal to the Civil Service Commision from such order. The Commission shall within two (2) weeks from the filing of said appeal, commence the hearing thereon, and shall thereupon fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellate shall be entitled to appear personally, produce evidence, and to have counsel and a public hearing. The findings and decision of the Commission shall be certified to the official from whose order the appeal is taken, and

shall forthwith be enforced and followed by him, but under no condition shall the employee be removed, suspended,or reduced in rank until such finding and decision of the Commission shall be so certified."

You are hereby advised of the procedural safeguards afforded you under the above-quoted section of the City Charter. You have ten (10) days from receipt of this letter to appeal to the Civil Service Commission regarding you rremoval pursuant to the above disposition of these charges.

Please note that the charges brought against you by Detective Milewski are still outstanding against you. A hearing date has not been set for those charges, pending resolution of Chief Sitek's charges against you. The Milewski charges are not being dismissed. If you would like a hearing date set on those charges, I will be willing to accommodate you, but otherwise will hold them in abeyance since your removal, if upheld by the Civil Service Commission, would make it unnecessary to proceed on them. Unless I hear from you on that matter, I will assume that you concur with my assessment of the matter.

Very truly yours,

s\s Henry Jablynski
HENRY JABLYNSKI,
Director of Public Safety
HJ/ksf

cc Chief of Police
Civil Service Commission
Legal Dept.
Ranking Officers Association

TRANSCRIPT EXCERPT

HAMTRAMCK CIVIL SERVICE

DISCIPLINARY HEARING

UPON CHARGES BROUGHT

AGAINST PETITIONER

ON AUGUST 20, 1979

Hamtramck, Michigan

August 20, 1979

MR. LISKA: This hearing is now in session. The reason for this hearing is simply that the City Charter, Chapter 9A, Section 30, under the Civil Service Commission states: any employee under the Civil Service Commission, who has been penalized has the right to appeal the penalty to the Civil Service Commission. The Commission, after holding its hearing, can affirm, modify or revoke the penalty.

Officer Harris asked for a hearing and it is scheduled for today. We have had two previously scheduled hearings that have been postponed at the request of Officer Harris, and certain guidelines of the hearing.

We will have the Safety Director and his witnesses first and Officer Harris and his witnesses second. All of the witnesses will be asked to step outside until they have testified. Once they have testified they can stay in the room. And, in the room are Officer Harris, the Safety Director, and the Chief and all principals involved, who may stay in the hearing.

Specifically, we have three charges, with violations of Sections 84: truthfulness required, Section 124, sub-section 10, neglect of duty or inattention of duty, and 124, sub-section 19, making a false statement.

The three charges are the gist of the hearing and the penalty was given by the Chief and upheld by the Director with a discharge.

And, I can add now, that after the hearing is completed the Civil Service Commission meets to discuss it and makes an attempt to reach a decision. If a decision is reached, all parties are notified by phone within 24 hours and if a decision can not be reached after the hearing, a meeting is scheduled immediately for further discussion and to try and reach a decision.

MR. WISHNOW: Before anybody puts any type of evidence on the record, Ihave a motion or request of the Commission. It appears that Lieutenant Harris through the union, as a police ranking officer has filed several grievances in regard to the suspension made of him by the Chief and upheld by the Director of Public Safety. These are grievances pending through the grievance machinery provided by the contract. I request of the Commission that the proceedings be adjourned and postponed until a date that is determined by the Commission or Counsel, as the case may be, or an Arbitrator if it goes that far, until the grievance filed by Lieutenant Harris are adjudicated as important grievances under the contract and in regard to his relationship and working condition with the City.

MR. LISKA: Let me answer that this way. If I understand correctly, we are here because Officer Harris

MR. LISKA: Before I ask both attorneys to summarize, do the Commissioners have any questions?

(Where upon all Commissioners indicated no).

MR. LISKA: Well, this is a very unusual hearing. Usually both sides have witnesses and we ask questions. Here, all we have is a TV and radio tape and no questions to ask on what was said and not said and what was false. Just by not having anyone on the witness sand is highly unusual and going to be a problem by not being able to go into questions and answers. However, that's your right under the Rulings, and we have to go by that. Well, since there are no questions, I will can on Mr. Canham.

MR. CANHAM: I appreciated the fact that we didn't bring any flesh and blood witness is

unusual and hope it isn't putting a monkey on anyone's back. This isn't a matter of someone having an altercation in an office or someone doing something in the line of duty where a person has chosen to go to the media and broadcast and telecast statements freely. I believe without any duress that I have asked the Commission to determine whether there has been willful deliberate imputing of the integrity and imputing criminal activity

to the Department. I don't believe there is anything in the world that protects that except the truthfulness of the statement.

Secondly, I don't feel there is any obligation on the part of the City. We don't know

28

anything more about things than you do, we asked a neutral organization of law enforcement of this community to look into this matter and they came up empty. On the basis of that, we know nothing more.

The officer himself did not indicate the truthfulness to us and we felt we had to take the action we took. What we are claiming is that this is wrong under the Charter, and if it is and you so conclude that, I believe an affirmation is in order.

MR. WISHNOW: I again ask the Commission to consider the procedural aspects of this case, indicated in the January 5th statements by Lieutenant Harris where charges were preferred on January 12th. The charges dated January 12th were in fact, served and received by Lieutenant Harris on January 13th.

I further argue that, that makes the January 7th statement by Lieutenant Harris also outside of the contract, because January 13th would be six days more, than five days after the occurrence of the alleged wrong-doing. Both charges were improperly and late brought.

Secondly, I argue that Exhibits 4 and 5 dated May 18, 1979, which are a formal letter to Lieutenant Harris from Chief Sitek and a letter to Director Jablynski, from Chief Sitek are, in fact, the formal charges brought, not the January 12th correspondence, received as January 13th. Exhibits 4 and 5 dated May 18th, 1979, are obviously tardy, as it is more than five days after the occurrence of the events complained of.

29

I also reiterate the statements that I previously made, that I feel any statements made by Lieutenant Harris are protected by the first amendment and is applicable to the constitutional guarantee of free speech.

Also, that the City has not fulfilled the burden. I think Mr. Chairman's comments and observations were quite accurate, in the respect that we are in a position of, in effect, trying to cross examine a letter from Mr. Carnovale from the Prosecutor's office, making certain conclusions as to the propriety of the allegations of Lieutenant Harris, and this is something that we can not do.

And, number two, there has been no showing whatsoever that what Lieutenant Harris has said on TV and radio assuming he does not have a first amendment protection, was either neglected duty or 124.1 of the Police Regulations, or a violation of truthfulness and an alleged violation of section 84, or making a false statement, a violation of 124.19 of the Police Rules and Regulations.

There has been no showing by what he said was, in fact, in violation of the charges as found by Director Jablynski in his decision of June 21st, 1979.

And, in effect statements have been shown to you and brought to your attention where you have been asked to make the conclusions that the statements are in violation of the three charges.

There has been no testimony by witnesses that they are, in fact, true. The burden does not shift to Lieutenant Harris to prove that. Thank you.

MR. CANHAM: In final response, very simply you have before you and the Chairman ruled earlier on the matter of procedure defects, as it was really another matter for another day. However, the letter from Lieutenant Harris and the letter from Director Jablynski was introduced and there were no objections. In other words, we take the position that we didn't make this complaint in May, we made it on January 12th, pursuant to the Rules and Regulations of the Ranking Police Officers Association. And, what we did thereafter was, I think, a decent thing, to submit it to a neutral organization and ask for an investigation. We didn't get a reply back until late in April from Dominick Carnovale, and then we proceeded with the machinery, because we didn't want to act with any haste and then we accordingly, when they came back, proceeded in an orderly fashion.

Secondly, we don't have to bring live witnesses when talking about charges such as these. When he states he can't cross examine the TV, he can, because the same person stating the charges is sitting right in this room. If he wants to ask if he

didn't say that, he has the witness right here. If somebody is denying that they were stated, then we're all crazy.

I didn't offer Dominick Carnovale's statement for sustenance evidence. I don't know if he examined the situation. I am offering it to you, not by way of sustenance evidence. We assumed that they did their job and acted accordingly. We don't have to bring witnesses here for that.

No. I ask since there is no rebuttal regarding the charges concerning the procedural hang-up, I ask for affirmation by the Commission.

MR. WISHNOW: I have nothing further.

MR. LISKA: Regarding the procedural matter, this is really not our job. In regard to the free speech issue, I for one, had so many questions to ask as to which one is a lie and so on, and I just have to go by what I saw and heard on the tapes.

All we're going to do is affirm, modify or revoke the penalty, and its going to be difficult in my mind to make an honest judgment, but we'll sure give it a try.

MR. CANHAM: That's all we can ask the Commission.

MR. LISKA: We will try to reach a decision and talk about it and notify the proper people involved by telephone or mail.

Thank you. This hearing is concluded.

32

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I hereby certify that the above and foregoing is a true and correct transcript of the proceedings taken before m on the 20th day of August, 1979.

s/s Sandra J. Poljanac,
Sandra J. Poljanac, Notary Public
Wayne County, Michigan R2302
My commission expires Dec. 20,1982

Civil Service Commission following the appeal Hearing requested by Detective Lieutenant Percy Harris, Jr., Monday, August 20, 1979.

Supported by Commissioner Wojcik.

Carried by the following vote:

Yeas: Commissioners Wojcik, Frederick, Sworek, Maydaniuk and Liska.
Nays: None.
Absent: None.

CIVIL SERVICE COMMISSION

s\s S. M. Amejka
S. M. Amejka
Personnel Director

SMA;je
cc: Percy Harris, Jr.
Director of Public Safety
Police Chief
Legal Dept.
Common Council
Affirmative Action Officer
Controller

EXCERPT OF
ARBITRATOR
WILLIAM J. MCBREARTY'S
JULY 11, 1980
OPINION AND AWARD

copies of this letter were sent to the Director of Public Sfety, The Civil Service Commission, the Legal Department of the City of Hamtramck and to James Canham. furthermore,city Attorney Canham wrote to Wayne County Prosecutor William L. Cahalan requesting an investigation of charges "imputing criminal activity to members of the Hamtramck Police Department (see Employer's Exhibit 2).

The Prosecuting Attorney's office wrote to Harris requesting him to appear in the office of Assistant Prosecuting Attorney Edward Babcock and present evidence "of wrongdoing on the part of the Hamtramck Police Department (Employer's Exhibit 3).

Upon the failure (or refusal) of Lt. Harris to give the Prosecuting Attorney's office evidence supporting his serious charges, the Chief Assistant Prosecuting Attorney wrote to Canham on April 26th that there was insufficient evidence to warrant prosecution against Harris for alleged perjury (a Court case) and, that Harris had produced no evidence of "actual wrongdoing on the part of the Hamtramck Police Department (other than past allegations by Harris of wrongdoing in the Hamtramck Police Department).

Attorney Canham then advised Police Chief Sitek to take up the "next course of action" against Harris (Employer's Exhibit 5) with the Director of Public Safety. Accordingly, Sitek wrote a two-page letter (Employer Exhibit 6) to Director Henry Jablynski recommending that Harris "be immediately relieved of active duty" and that "you as Director of Public Safety convene an immediate hearing to determine whether grounds exist for permanent dismissal."

This letter apparently set in motion Step Three of Article XIV of the Collective Bargaining Agreement which provides

that should a problem or dispute between Association members (police ranking officers) and their superiors go unresolved (Steps One and Two), then "a meeting between the Association representative and the Director of Public Safety shall be formally requested in writing supported by a statement of the grievance and such meeting shall be held within three days following such requests."

(Parenthetically, both sides claim that the various steps necessary to insure jurisdiction of an arbitrator in this discipline case were not observed; or, if they were observed, it was belatedly.) At any rate, on June 21, 1979, Director Jablynski scheduled the hearing required by Step Three and it was finally held on June 21, 1979.

Previous to this hearing date on May 18, 1979, Chief Sitek wrote to Lt. Harris charging him with the

following violations of the Hamtramck Police Department's Rules and Regulations:

Section 84-Truthfulness Required
Section 124-8 -Conduct Unbecoming an Officer
Section 124-10-Insubordination and Disrespect
Section 10-Neglect of Duty or Inattention to Duty
Section 19-Making a False Statement.

This letter also stated that "the above mentioned charges have been brought about in part because of your failure to substantiate your accusations to the news media (Radio and T.V.), and for other related reasons." (Joint Exhibit 3). The letter referred Lt. Harris to Chief Sitek's May 18th letter to the Director (See Employer's Exhibit 6, a copy of which had been sent to Lt. Harris.)

-9-

Harris appeared at the hearing before the Director on June 21st, but made no defense to Sitek's May 18th charges (violation of police rules and
and regulations). On the following day Director Jablynski informed Harris by letter (See Joint Exhibit 9) that the charges brought by Chief Sitek against him in connection with his radio and T.V. interviews were determined by him to be supported by the record (audio tape, etc.).

The Director's letter stated that while Harris had a right to appear on these medias as a Hamtramck Police Officer, that he had a duty to conduct himself

as a police officer (Section 124.8-Conduct Unbecoming an Officer), and that failure plus his failure to substantitate his charges of criminal activity and wrongdoing of the Hamtramck Police Department justified his discharge. Harris' attention was directed to the provision of the Hamtramck Civil Service Act which gives a discharged (or disciplined) officer the right of appeal to the Civil Service Commission.

Harris took an appeal. But again, for the third time, Harris refused or decided not to (the record is silent on the reason for his decision) testify before the Civil Service Commission in defense of his serious media charges. The Commission, consisting of five members, unanimously, on August 23, 1979, affirmed Public Safety Director Jablynski's discharge of Harris; and on the same date Harris' former attorney, Edward Wishnow, was so informed by
letter, with a copy to Percy Harris, Jr. (See Employer
Exhibit No. 11).

This dispute was then placed before the American Arbitration Association on or about January 11, 1980 and the hearings and this Opinion and Award followed.

Name (Last) (First) (Middle)	(Race)	(Sex)	(Birthdate)	File
HARRIS Percy	N	M	32 Yrs.in 1970	Code 100

Weight Height Eyes Hair	Birthplace		Organization	

Address	(xx)and/or Employment
	Hamtramck Police Department Phone #

Date	File No.	Serial No.	COMMENTS:
==	100	Pg. 217	Det. Free Press, 3-6-70, Pg. 12-D. Hamtramck Patrolman Back on Job.
==	100	218	Det. Free Press, 2-28-70, Pg. 68. Hamtramck Told: Reinstate Officer
12-23-69	100	236	
10-15-70	100	760	Det. Free Press, pg. 1A. "Patrolman Stops (or Pay, Suspended for Loitering
			Detroit News. Pg. 13C. "Gun Threat charged to Hamtramck officer.

(SEAL)
UNITED STATES DEPARTMENT OF JUSTICE
In Reply Please Refer to
File No.
FEDERAL BUREAU OF INVESTIGATION

DETROIT, MICHIGAN
September 9, 1979

Lieutenant Wallce J. Wilson
Chief Arthur A. Chojnacki
Hamtramck, Michigan Police Department;
Percy Harris, Jr., - Victim
Civil Rights

United States Attorney Ralph B. Guy, Jr., Detroit, Michigan, received the following communication from Percy Harris, Jr., dated August 30, 1971:

s\s 44-51953-x

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

s\s 44-19774
s\s ENCLOSURE

F B I
Date: 9/9/71

Transmit the following

(type in plain text or code)

Via AIRTEL
(Priority)

==========

TO: DIRECTOR, FBI

FROM: SAC, DETROIT (44-New) (C)

LIEUTENANT WALLACE J. WILSON;
CHIEF ARTHUR A. KOJNACKI,
HAMTRAMCK, MICHIGAN POLICE
DEPARTMENT;
PERCY HARRIS, JR.,
VICTIM
CR

Enclosed for the bureau are four copies of LHM concerning above matter.

One copy of LHM has been furnished USA, Detroit.

2 - Bureau (Enc. 4)
1 - Detroit
MFC/pjw
(3)

s\s ENCLOSURE 4

App. 50

s\s EX-100

S\S 44-51953-X
S\S 44-0-19774

S\S (Stamp) Sep 14 1971

s\s ICC:AAG:CRD
s\s 694 (G) HLM:: CC
s\s CRU 9/14/71

Approved: _____Sent_____M Per _____
Special Agent in Charge
U.S. gOVERNMENT PRINTING OFFICE:

s\s (Date Stamp & Crossed Off) 1 SEPT 20 1971

S\S (Date Stamp) May 2, 1972

s\s (Date Stamp) Mar 31, 1972

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PERCY HARRIS, JR.,

Plaintiff,

vs.

CIVIL NO. 81-74095

CITY OF HAMTRAMCK; HAMTRAMCK POLICE DEPARTMENT; HAMTRAMCK CIVIL SERVICE COMMISSION; JOHN SITEK, Chief of Police; HENRY JABLYNSKI, Director of Public Safety; individually and in their official capacities, jointly and severally,

Defendants

_____/

OPINION

Plaintiff, a black male, instituted the present action against the City of Hamtramck, the Hamtramck Police Department, the Hamtramck Civil Service Commission, the Hamtramck Chief of Police, and the Hamtramck Director of Public Safety following his discharge from the Hamtramck Police Department. Although he alleges that his discharge was accomplished in violation of numerous provisions of the United States Constitution and Code,

Plaintiff basically relies on two theories of recovery in his complaint. First, plaintiff claims that defendants violated his rights to free speech and due process when he was terminated for making certain statements to the news media without being given a fair opportunity to establish the truth of those statements.

Second, plaintiff claims that defendants violated his right to be free from racial discrimination as the aforementioned actions were taken because of his race. As a result of these alleged deprivations, plaintiff seeks both equitable and damages relief.

The case is presently before the court on defendants' motion to dismiss. In their motion, defendants contend that the present action is barred by the doctrines of res judicata and collateral estoppel. Because defendants' motion to dismiss is premised on the claimed prior resolution of the present dispute by either this court or the Wayne County Circuit Court in earlier decisions, the court must review the history of litigation between these parties before it considers defendants' position.

These parties were initially before this court as a result of various incidents that occurred in the early seventies. Although two complaints were eventually filed by plaintiff, both actions involved allegations that defendants had discriminated against plaintiff by denying him certain promotional opportunities because of his race. Following consolidation of the two actions, a bench trial was held before this court.

Subsequently, the court rendered a lengthy opinion on January 2, 1979, in which it concluded that plaintiff had not been discriminated against because of his race. Nevertheless, the court did conclude that defendants had engaged in certain retaliatory acts against plaintiff as a result of his filing the two civil rights

actions and ordered the defendants to refrain from further retailiatory discrimination.

Three days later, plaintiff appeared on a radio broadcast and made several accusations concerning his alleged disparate and discriminatory treatment by the defendants. Similar accusations were made by plaintiff on a television broadcast two days later. Thereafter, the Hamtramck Chief of Police, on January 12, 1979, notified plaintiff that his appearance on those programs might result in his dismissal. Before any action regarding the broadcasts could be taken by defendants, however, this court, on January 23, 1982, reopened the prior actions to investigate Plaintiff's claim of further retaliatory acts by defedants. On March 28, 1979, the court, following an evidentiary hearing, issued its final judgment in those actions finding that defendants had engaged in further acts of retaliation against plaintiff. As a result, the court entered a second order which directed the defendants to cease further retaliatory discrimination.

Approximately two months later, on May 17, 1979, the law firm representing the City of

Hamtramck requested the Wayne County Prosecutor's Office to investigate the accusations made by plaintiff in the January broadcasts. The next day, the Hamtramck Chief of Police formally charged plaintiff with several violations of Hamtramck Police Department Regulations as a result of plaintiff's appearance on the broadcasts. In addition, the Chief of Police suspended plaintiff with pay

and requested the Hamtramck Director of Public Safety to hold a hearing to determine whether grounds existed for plaintiff's permanent dismissal. Following the requested hearing, the Director, on June 21, 1979, determined that plaintiff had breached various police regulations by making accusations of criminal conduct on the January broadcasts and recommended that plaintiff be permanently discharged.

The recommendation of the director was reviewed by the Hamtramck Civil Service Commission on August 20, 1979. Although the Commission invited plaintiff to participate in its review, plaintiff refused because he felt that the procedure used by the Commission unfairly shifted the burden of proof and denied him adequate discovery and cross-examination. As a result, the only evidence introduced at the Commission hearing were tapes of the January broadcasts and letters from the Wayne County Prosecutor indicating that plaintiff had failed to come forward with any evidence in support of his accusations. Three days later, on August 23, 1979, the Commission affirmed the director's decision and plaintiff was terminated.

The decision of the Commission was appealed to two forums. First, plantiff's union took the issue of plaintiff's termination to arbitration. In accordance with the provisions of the relevant collective bargaining agreement, a hearing was held before the arbitrator in which both plaintiff and his counsel appeared. Following the hearing, the arbitrator, on July 11, 1980, denied the Union's grievance on the ground that good cause existed for plaintiff's termination. Second plain-

tiff appealed the Commission's ruling to the Wayne County Circuit Court. This appeal was dismissed by the state court in an order dated November 26, 1980. In an attached opinion, the court indicated that this dismissal was based on the limited authority of a state court to review an issue subject to arbitration. See GCR 769.9. Because the issue of whether plaintiff was properly terminated was a matter subject to arbitration under the relevant collective bargaining agreement, the court concluded that it could not review that question. As to plaintiff's contention that the Hamtramck Civil Service Commission denied plaintiff his constitutional rights, the court stated:

> Further, even if allowing for argument's sake, that due process or other Constitutional violations did occur at the Civil Service Commission hearing in 1979, those errors were rendered harmless by the subsequent arbitration hearings. At that hearing, appellant introduced evidence, he testified and benefited from full participation of counsel. Due process participation thus was

provided and appellant was not deprived of his Constitutional rights.

The following spring, plaintiff filed a formal complaint with the EEOC alleging that defendants had terminated him because of his race. On August 7, 1981, plaintiff received his right to sue letter. Almost three months later, on November 4, 1981, plaintiff filed the present complaint. With this background, the court will now consider defendants' motion to dismiss. 1

1Prior to the filing of this action, plaintiff, acting pro se, filed several motions for new trial in his original actions. These motions, as well as a related motion to disqualify the trial judge, were denied on January 20, 1982. Plaintiff's motion for reconsideration of his motions for new trial was also denied on March 1, 1982. Although Plaintiff mentioned his termination in providing background for those motions, plaintiff opted to challenge the validity of his termination in a separate action. Thus, the court did not consider the validity of plaintiff's termination in ruling on those motions.

As noted by the Supreme Court in Allen v. McCurry, 449 U.S. 90 (1980), federal courts are bound by the related doctrines of res judicata and collateral estoppel even in the area of civil rights litigation. Accord. Kremer v Chemical Construction Co., 50 U.S.L.W. 4487 (1982). Under the doctrine of

res judicata, "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Allen, supra. Under the doctrine of collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." Id. Turning first to defendants contention that this court's ruling in the prior actions or the state court's ruling in the appeal from the Civil Service Commission have res judicata effect, the court concludes that the doctrine of res judicata is inapplicable as neither court has rendered a final judgment on the merits of plaintiff's claims. Although plaintiff attempted to raise the issue of his unlawful termination before both courts, neither court ruled on the merits of that claim in resolving the case before it. As to this court's final judgment in the prior actions between these parties, the court would note that the plaintiff's termination occurred after the rendering of that judgment. As to the state court's dismissal of plaintiff's administrative appeal, the court would note that the basis of that dismissal was the state court's

conclusion that it had no authority to make a final judgment relative to the lawfulness of plaintiff's termination. Accordingly, the court holds that the present action is not barred by the doctrine of res judicata. 2

Turning to defendants' contention that this court's ruling in the prior actions or the state court's ruling in the appeal from the Civil Service Commission collaterally estop plaintiff from bringing this action, the court initially concludes that this court's prior judgment does not preclude plaintiff from pursuing his present claims. Given that plaintiff's termination occurred after the court's final judgment in the prior actions, the court has not decided any issues of fact or law that are in controversy in the present suit. 3 Similarly, the court concludes that the state court decision does not preclude plaintiff from pursuing his claim of racial discrimination. A review of the state court's opinion as well as the pleadings filed by plaintiff in that action indicates the state court never considerd the possibility that plaintiff's termination was motivated by race. Despite this conclusion relative to plaintiff's claim of racial discrimination, the court concludes that the state court's decision does estop plaintiff from pursuing the remainder of his claims. As indicated above, the state cort held that plaintiff's alleged deprivation of due process and

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2 Although the arbitrator did rule on the merits of plaintiff's claim, the Supreme Court has previously established that the decision of an arbitrator has no preclusive effect on the ability of a party to pursue a civil rights action. See, Kremer v. Chemical Construction Co., 50 U.S.L.W. 4487 (1982); Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

3 See note 1, supra.

other constitutional rights had been cured by his participation in the arbitration hearing. Moreover, that finding was necessary to the state court's granting of defendants' motion to dismiss, as the question of whether plaintiff had been denied his constitutional rights was not a matter sbject to arbitration. Although plaintiff contends that he was not given a full and fair opportunity to litigate his due process claims, see Kremer, supra; Allen, supra, the court finds no merit to this contention in light of the exhaustive opinion of the state court. In short, there is no reason to doubt the quality, extensiveness, or fairness of the procedures followed in the state action. 4 Therefore, the court holds that plaintiff is collaterally estopped from litigating the alleged deprivation of his free speech and due process rights by the Hamtramck Civil Service Commission. 5

S\S Ralph B. Guy Jr.
RALPH B. GUY, JR.
United States District Court

DATED: S\S JUL , 1992

4 It should be noted that plaintiff made no effort to appeal the adverse ruling by the state trial court. Further, the essence of plaintiff's complaint before this court is a discriminatory termination based on racial grounds. The ruling of this court on this motion preserves that issue and will give plaintiff his day in court on that matter.

5 Although plaintiff captions his third claim as a deprivation of his right to freedom of speech, a review of that claim indicates that the alleged deprivation resulted from defendants' alleged refusal to provide plaintiff with a fair opportunity to prove the truth of his accusations. Thus, plaintiff's third claim sounds in due process and is barred by the state court's decision. Because plaintiff has chosen not to pursue a pure first amendment claim, the court need not determine whether the state court decision would preclude such a claim.

ADMINISTRATIVE ORDER 1994-4
RESOLUTION OF CONFLICTS IN COURT OF APPEALS DECISIONS

A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990. The prior published decision remains controlling authority unless reversed or modified by the Supreme Court or a special panel of the Court of Appeals as provided in this order. A panel which follows a prior published decision only because it is required to do so shall so indicate in the text of its opinion, citing this administrative order and providing a statement of wherein and why it disagrees with the prior published opinion.

When a panel of the Court of Appeals indicates in its opinion that it is following a prior published decision only because it is required to do so, the opinion in the case at bar shall be published in the official report of opinions of the Court of Appeals, and the Chief Judge of the Court of Appeals shall within 14 days after release of the opinion complete a poll of the judges of the Court of Appeals to ascertain whether a special panel of that Court, as described *infra*, should be convened to rehear the case for the purpose of resolving the conflict which would have been created but for the provisions of this order. This procedure is to be invoked for outcome-determinative questions only. An order reflecting the result of the poll shall enter immediately thereafter and the order shall be

published in the official report of opinions of the Court of Appeals.

If a majority of the judges of the Court of Appeals vote in favor of convening a special panel, an order to that effect shall be entered. If a majority of the judges of the Court of Appeals does not vote in favor of convening a special panel, an order to that effect shall be entered. The time limits for moving for rehearing or for filing an application for leave to appeal to the Supreme Court shall be calculated from the date of entry of the order declining to convene a special panel or, if a panel is convened, from the date of the release of the opinion of the special panel.

An order directing the convening of a special panel shall vacate the prior opinion in the case at bar. The parties shall be permitted to file supplemental briefs and shall be entitled to oral argument before the special panel.

A special panel convened pursuant to this administrative order shall consist of 7 judges of the Court of Appeals selected by lot, except that judges who participated in either the controlling decision or the decision in the case at bar may not be selected. The decision of the special panel shall be published and is binding on all panels of the Court of Appeals unless reversed or modified by the Supreme Court.

When a poll of the judges of the Court of Appeals is taken pursuant to this order, the Chief Clerk of the

Court of Appeals shall notify the Clerk of the Supreme Court of the poll and shall provide a copy of the order reflecting the result of the poll.

This administrative order shall take effect on May 1, 1994, and shall remain in effect until April 30, 1996, or until the further order of this Court.

Administrative Order 1990-6 is rescinded, effective May 1, 1994.
[Entered April 27, 1994.]

Court of Appeals, State of Michigan

ORDER

Michael J. Connor
Presiding Judge

Percy Harris v Mich Employees Retirement Systems

Docket # 166601

Roman S. Briggs
Maureen Pulte Reilly

L.C. # 93-302439 AW

Judges

The Court orders that the motion for Order of Contempt and Sanctions against plaintiff's attorney Eleanor Cattron Smith is DENIED.

The Court further orders that attorney Smith be removed from the appeal without prejudice to any attorney lien she may retain in this case. The case is STAYED for 28 days from the Clerk's certification of this order to permit plaintiff-appellant to retain new appellate counsel, or to indicate that he will proceed in propria persona.

(SEAL)
State of Michigan
Court of Appeals

A true copy entered and certified by Ella Williams, Chief Clerk, on

s\s June 21,1994 **s\s Ella Williams**
Date Chief Clerk

Court of Appeals, State of Michigan

ORDER

Harold Hood
Presiding Judge

Percy Harris v MERS

Docket # 166601

Myron H. Wahls
Maura D. Corrigan

L.C. # 93-302439 AW

Judges

The Court orders that the motio to disquaify Judge Connor is DENIED as unnecessary. Judge Connor has automatically been recused from consideration of this matter. Plaintiff's additional request that all judges of the First District of the Court of Appeals be disqualified is DENIED as meritless.

(SEAL)
State of Michigan
Court of Appeals

A true copy entered and certified by Ella Williams, Chief Clerk, on

s\s August 26, 1994 **s\s Ella Williams**
Date Chief Clerk

STATEMENT OF FACTS

1. There is only one question before this court, reduced to its bare essentials?

Are the actual charges brought against Percy Harris, Jr., for which he was dismissed from employment void abinitio because they were brought in violation of MCLA 38.514; MSA 5.3364?

2. That question was answered affirmatively in ***Goodridge V Ypsilanti Twp, Bd.*** **209 Mich App 344, 351 (1995)**, now this court is called upon to answer whether that rule of law applies to a black man when the facts are indistinguishable. On **January 12, 1979,** Petitioner was served with a written **"notification"** that charges might be brought against him because of his appearance on media interviews, which occurred on **January 5, 7, 1979.**

There were two (2) charges listed in the notice:

1. 124. 8 Conduct unbecoming a Police Officer
2. 124.9 Insubordination

On **May 18, 1979,** he was served with an actual list of charges, consisting of the above **two (2)** charges and **three (3)** additional charges as follows:

3. 124.10 Neglect of duty or inattention to duty
4. 124.19 Making a false statement
5. 84 Truthfulness required

On **June 6, 1979,** after a hearing before the then **Director of Pubic Safety, Mr. Henry Jablynski,** Petitioner was found guilty of all charges. However, no penalty was imposed upon Appellee with regards to the first **two (2) charges.**

As to the second **three (3) charges, Director Jablynski** recommended Appellee's dismissal from employment.

The Hamtramck Ranking Officers Association (RA), Collective Bargaining Agreement states in part as follows:

> **"All charges shall be void unless filed within five (5) days after the occurrence of the alleged violation."**

That **MCL 38.514** states in part as follows:

> **"All charges shall be void unless filed within ninety (90) days of the date of the violation."**

That disregarding Appellee's **labor contract** and charges **Nos. 1 and 2,** it is too plain to admit of any serious argument that the **three (3) charges** for which he was dismissed from employment and sufferred actual injury from were **Nos. 3, 4, and 5** above, which were filed more than **ninety (90) days after the date** of the **January 5, 7, 1979,**media interviews, **forty-one (41) days late.**

7. That with respect to dismissal for **"cause", MCL 38.514** sets forth thirteen (13) specific categories of offenses for which a policeman or fireman may be removed from employment.

> **Sec. 14. The tenure of everyone holding an office, place, position, or employment under the provisions of this act shall be only during good behavior and efficient service; and any such person may be removed or discharged, suspended without pay, deprived of vacation privileges, or other special privileges, by the civil service commission, for incompetency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, violation of provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office.**

United States District Court
Eastern District of Michigan
Southern Division

PERCY HARRIS, JR.,
Plaintiff,

vs CIVIL ACTION NO. 81-74095

CITY OF HAMTRAMCK, et al,
Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION
TO DISQUALIFY TRIAL JUDGE

This matter is before the court on plaintiff's motion to disquality the trial judge. In accordance with the attached Opinion;

IT IS ORDERED that Plaintiff's Motion to Disqualify the Trial Judge is hereby DENIED.

s/s Ralph B. Guy, Jr.
RALPH B. GUY, JR.
United States District Judge

DATED: s/s Dec. 8, 1982

SEAL

A TRUE COPY

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

By s/s Marilyn A. Evers
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PERCY HARRIS, JR.,
Plaintiff,

vs. CIVIL ACTION NO. 81-74095

CITY OF HAMTRAMCK, et al,
Defendants
_____/

OPINION

Plaintiff, a black male, instituted the present action against the City of Hamtramck, the Hamtramck Police Department, the Hamtramck Civil Service Commission, the Hamtramck Chief of Police, and the Hamtramck Director of Public Safety following his discharge from the Hamtramck Police Department. In his complaint, plaintiff relief on two theories of recovery. First, plaintiff claimed that defendants violated his right to free speech and due process when he was terminated for making certain statements to the news media without being given a fair opportunity to establish the truth of those statements. Second, plaintiff claimed that defendants violated his right to be free from racial discrimination as the aforementioned actions were taken because of his race.

The present action is the third action between these parties that has been brought before this Court. In the prior actions, plaintiff alleged that defendants, as plaintiff's employer and supervisors, acted willfully in discriminating against plaintiff because of race. Following consolidation of the first two actions, the court, on December 1, 1978, rendered a lengthy opinion in which it concluded that plaintiff's civil rights claims, except the claim relating to retaliatory conduct, should be dismissed. Because the court found that defendants had engaged in certain retaliatory acts against the plaintiff because of the bringing of the prior actions, the court ordered defendants to return plaintiff to his normal duties.

On January 26, 1979, plaintiff filed a motion to reopen the judgment because of further retaliatory discrimination. Following an evidentiary hearing, the court determined that plaintiff had been subjected to retaliatory discrimination. In its final judgment, dated March 28, 1979, the court ordered that plaintiff be restored to his full duties and restrained defendants from taking any further retaliatory actions against plaintiff.

Approximately two months later, on May 18, 1979, the Chief of the Hamtramck Police Department suspended plaintiff for conduct unbecoming an officer as a result of plaintiff's appearance on radio and television broadcasts in January. Following a hearing before the Hamtramck Director of Public Safety, the Director determined that plaintiff had breached police regulations and recommended that

plaintiff be permanently discharged. On August 23, 1979, the Hamtramck Civil Service Commission affirmed the decision of the Director and plaintiff was terminated. After attempts to reinstate plaintiff under the grievance provisions of the relevant collective bargaining agreement proved unsuccessful, plaintiff filed a complaint with the EEOC. On August 7, 1981, plaintiff received his right to

sue letter. Thereafter, plaintiff, on November 4, 1981, instituted the present action. In addition, plaintiff moved for a new trial in the original actions and moved to disqualify the trial judge because of the judge's access to certain documents while United States Attorney.

On January 20, 1982, the court denied plaintiff's motions to disqualify the trial judge and for new trials in the original actions. In addition, the court, on March 1, 1982, denied plaintiff's motion for reconsideration relative to the motions for new trials. As a result, the only issues remaining in dispute wre plaintiff's claims of denial of due process, free speech, and equal protection because of his discharge. Those issues were further narrowed by the court's granting of defendants' motion to dismiss plaintiff's claims relative to the alleged violation of his rights to free speech and due process. Thus, the only issue remaining in dispute is whether plaintiff's discharge was racially motivated.

On September 10, 1982, the court received a

letter from plaintiff which indicated that he had terminated his relationship with his attorney of record. Specifically, plaintiff stated that such action was necessitated by his attorney's refusal to file a motion to disqualify the trial judge in this action. In addition, plaintiff requested the trial judge to recuse himself under the provisions of 28 U.S.C. § 455 (b)(1)(3).

In Roberts v Bailar, 625 F. 2d 125 (6th Cir. 1980), the court set forth the standard to be applied in determining whether a judge should recuse himself under § 455 as follows:

Prior to 1974, § 455 required disqualification of any judge who was soconnected with a party that it was improper, "in his opinion," for him to preside at the trial. The test for disqualification under the former § 455 was subjective: disqualification was obligatory only when a judge, in examining his own conscience, found bias unavoidable. In close cases, moreover, the judge had a "duty to sit" in spite of his predilections.

To promote public confidence in the impartiality of the federal judicial system, the Congress in 1974 shifted the focus of § 455. "Any . . . .judge," § 455 (a) now provides, "shall disqualify himself in any proceeding in which his impartialitymight be reasonably questioned." No longer is a judge's introspective estimate of his own abiityimpartially to

hear a case the determinate of disqualification under § 455. The standard now is objective. It asks what a reasonable person knowing all the relevant facts would think about the impartiality of the judge. "[I]f there is a reasonable factual basis for doubting the judge's impartiality, " the congressional committee reports on the 1974 amendment to § 455 explain, the judge "should disqualify himself and let another judge preside over the case." Even where the question is close, the judge whoseimpartiality might reasonably be questioned must recuse himself . . . .

Id. at 128. Thus, the court must determine whether a reasonable person knowing all the relevant facts might reasonably question the impartiality of the judge.

In his letter, plaintiff recites the same grounds for recusal that were rejected by the court in its earlier decision. As a result, the court concludes, for the reasons set forth in its earlier opinion which is incorporated herein in its entirety, that plaintiff's motion to disqualify the trial judge pursuant to 28 U.S.C. § 455 must be denied. In addition, the court would note that the judge's access to documents concerning plaintiff's earlier actions while the United States Attorney could provide no basis for recusal in the present action which involves unrelated

incidents of alleged discrimination. Accordingly, the trial judge will not recuse himself from the instant action.

s/s Ralph B. Guy, Jr.
RALPH B. BUY, JR.
United States District Judge

DATED: s/s Date: Dec. 7, 1982

S E A L (Illegible)

A T R U E C O P Y
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF
MICHIGAN

By: s/s Marilyn A. Evers
DEPUTY CLERK

F.S. Van Tiem

313/226-3380

March 14, 1977

Department of Justice
Civil Rights Division
Employment Section
Washington, D.C. 20530

Re: Lieutenant Wallace Wilson, Chief Arthur A. Kojnacki, Hamtramck Police Department
Percy Harris, Jr., - Victim: Civil Rights

Dear Sir/Madam:

Attached are two letters, one dated October 16, 1976 and one dated August 30, 1971, regarding the above-captioned matter. Also enclosed is a copy of an FBI report to this office. Initially, this matter was referred to the Federal Bureau of Investigation by John Conley, Chief of the Criminal Division in this Office. Mr. Harris is presently a litigant in a civil action before U.S. District Judge Ralph Guy, Jr., and it is the understanding of this office that Department of Justice policy is not to initiate a criminal investigation during the pendency of civil litigation.

Subsequent to the initial contact by Mr. Harris, there was a conference between Detective Harris

and Mr. Conley. Based on that, I felt it appropriate to forward this information to you even though a civil suit is pending to as to avoid any possible statute of limitations problems.

Very truly yours,

PHILIP VAN DAM
United States Attorney

Frederick S. Van Tiem
Chief Assistant U.S. Attorney

s/s FSVT: CLMW
encls.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PERCY HARRIS,
Plaintiff

93-302439AW 1/26/93
JDG: RICHARD C. KAUFMAN
HARRIS PERCY
VS
MICHIGAN DEPT TREASURY

v

MICHIGAN DEPARTMENT OF TREASURY
CITY OF HAMTRAMCK, HAMTRAMCK CITY COUNCIL, MICHAEL ZEBROWSKI, CONTROLLER AND JOSEPH GREZECKI, TREASURER,
Jointly and Severally,
Defendants.

ELEANOR CATTRON SMITH (P29738)
Attorney for the Plaintiff
30700 Telegraph Road, Sute 1580
Bingham Farms, Mi 48025
(313) 647-7413

BELLANCA, BEATTIE & DELISLE, P.C.
JAMES V. BELLANCA, JR. (P10663)
LAWRENCE J. PAOLUCCI (P46250)
Attorneys for Hamtramck Defendants
1200 Penobscot Building

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(313)964-4200

MICHAEL J. MOQUIN (P27304)
Assistant Attorney General
State of Michigan Defendant
401 South Washington 3rd Floor
Lansing, MI 48913-0001
(517)373-1174

ORDER FOR PAYMENT OF RETROACTIVE PENSION BENEFITS AND PRE-JUDGMENT INTEREST AND ORDER DENYING MOTION FOR REHEARING

At a session of said Court held in the City of Detroit, this 3rd day of June, 1993.

PRESENT: HON: (Stamp) RICHARD C. KAUFMAN
Circuit Judge

This Court having entered a Final Order Partially Granting and Partially Denying Mandamus on May 26, 1993, a Motion for Rehearing and a Motion for payment of Retroactive Pension Benefits and Pre-Judgment Interest having been filed by the Plaintiff, briefs having been submitted to the Court by the parties and a hearing having been held on June 30, 1993 and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff made application for pension benefits on

August 11, 1992 by letter of his then attorney, A.Stephen Ramadan, a copy of said letter is attached hereto.

IT IS FURTHER ORDERED AND ADJUDGED that in accordance with that certain judgment of the United States District Court, Eastern District of Michigan, Southern Division, in Percy Harris, Jr. v. City of Hamtramck, et al, Case No. 81-74-095, entered by that Court on February 4, 1985 and the Order of this Court on May 26, 1993 the Plaintiff, PERCY HARRIS, is entitled to pension benefits beginning September, 1992, the month following the date of his application.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff be paid statutory interest at the rate of 6.97% on any retroactive payments from September, 1992 through and including June of 1993 from the date of the filing of the within complaint, January 26, 1993 through the date of payment.

IT IS FURTHER ORDERED AND ADJUDGED Plaintiff's Motion for Rehearing be and the same is hereby denied.

s/s (Stamp)RICHARD C. KAUFMANN
Circuit Judge

Approved for filing, notice
of presentment waived.

s/s E. Cattron Smith
ELEANOR CATTRON SMITH (P29738)

Attorney for the Plaintiff

A TRUE COPY
(ILLEGIBLE)
S/S (Signature Illegible)
Deputy Clerk

s/s James V. Bellanca Jr.
JAMES V. BELLANCA, JR. (P10663)
Attorney for Hamtramck Defendants